

SPEECHES, ARGUMENTS, &c.
OF THE
LORDS of Session in SCOTLAND,
IN THE
DOUGLAS TRIAL.

ST. JOHN

DE. 1852

SPEECHES, ARGUMENTS, &c.

THE LORDS OF THE

Lords of Session in Scotland

IN THE

DOUGLAS TRIAL.

10 N 6

**T H E
SPEECHES, ARGUMENTS,
A N D
DETERMINATIONS
O F**

**The Right Honourable
The LORDS of COUNCIL and SESSION
in SCOTLAND,**

**U P O N
THAT IMPORTANT CAUSE,**

**WHEREIN
His Grace the Duke of HAMILTON and Others
were Plaintiffs, and ARCHIBALD DOUGLAS of
DOUGLAS Esq; Defendant.**

**W I T H A N
INTRODUCTORY PREFACE,**

**G I V I N G
An impartial and distinct Account of this Suit.**

BY A BARRISTER AT LAW.

**L O N D O N:
Printed for J. ALMON, opposite Burlington-House,
in Piccadilly. M DCC LXVII.**

12

THE
SPEECHES, ARGUMENTS,
AND
DETERMINATIONS

OF
The Right Honourable
The Lords of Council and Session
IN SCOTLAND,



THE GRACE OF
THE PARLIAMENT OF GREAT BRITAIN
AND OF THE PARLIAMENT OF SCOTLAND
IN PARLIAMENT ASSEMBLED

WITH AN
INTRODUCTORY PREFACE

BY
A BARRISTER AT LAW

LONDON:
Printed for J. Anderson, opposite St. James's Palace,
in Pall-mall, near the Theatre Royal, 1801.

INTRODUCTORY PREFACE.

THE cause betwixt the Duke of Hamilton and Mr. Douglas, has for some years past made so great a noise in the world, that every body was anxious to be informed of the merits of a question, so remarkable in its nature, and so important in its consequences. However, it was no easy matter for persons residing in England, and totally unacquainted with the forms of trial in Scotland, to get proper information, either as to the method of proceeding before their courts of law, or to procure a full and impartial view of the general state of the facts upon which judgment was to be given. This being the case, I wrote to a friend of mine in Scotland, who had paid great attention to the whole

proceedings of the cause, to inform me of the state of the facts at issue betwixt the parties, of the forms and customs of Scotland in such trials, and of the principles of law founded on by the respective parties. In obedience to my request, my friend favoured me with the following letter, which it is not doubted will be acceptable to the reader, as it will give him a distinct and impartial account of the origin of this great suit, of the leading facts controverted by the parties, and which have now received the solemn judgment of the court of session. The letter is as follows.

‘ I do not wonder, Sir, That you express so strong a curiosity to be informed of the particulars of the famous Douglas cause. It gives me pleasure to be in some measure able to satisfy your curiosity, and therefore you may take the following account of the mat-

ter, which I write without any byas
 or partiality whatever to the one side
 or other.

You that are so well acquainted with
 the history of our country, cannot be
 ignorant of that of the family of Dou-
 glas, which is one of the most ancient
 and noblest in Europe, whether we
 consider its long train of ancestors, the
 extent of their domains, the grandeur
 of their alliances, or their courage and
 process in war. It is unnecessary to
 dip further into the history of this
 family, than to observe some particu-
 lars in their genealogy, without which,
 one cannot *form a proper* view of the
 claims and titles of the respective com-
 petitors in this great cause; the follow-
 ing particulars therefore merit your
 observation.

William the XIth Earl of Angus,
 and undoubted chief of this noble fa-
 mily,

' mily, was, by his Majesty King Charles
 ' I. * dignified with the title of Marquis
 ' of Douglas, by letters patent, to him,
 ' and his heirs male whatever. This
 ' Marquis of Douglas was twice married,
 ' first to Margaret, daughter to Lord
 ' Paisley, and secondly to Lady Mary
 ' Gordon, daughter of George Marquis
 ' of Huntley. By his first wife he had
 ' a son, Archibald Earl of Angus, grand-
 ' father to the late Duke of Douglas;
 ' and by his second wife, another son,
 ' William Douglas, Earl of Selkirk,
 ' who afterwards became Duke of Ha-
 ' milton, and was the great grand-fa-
 ' ther of the present plaintiff George
 ' James, Duke of Hamilton.

' Archibald Earl of Angus first son,
 ' and heir apparent, died before his fa-

' 17th June, 1633.

' ther,

'ther, and was succeeded by his son
 ' James, who became second Marquis of
 ' Douglas. James Marquis of Douglas
 ' was twice married, first to Lady Bar-
 ' bara Erskine, daughter of John Earl of
 ' Mar, by whom he had a son James,
 ' Earl of Angus, a young hero, but who
 ' was unfortunately slain at the battle of
 ' Steinkirk, in the 21st year of his age,
 ' Anno 1692.

' James Marquis of Douglas married
 ' secondly, Lady Mary Kerr, daughter
 ' of Robert Marquis of Lothian, by
 ' whom he had a son Archibald, after-
 ' wards created Duke of Douglas by
 ' Queen Anne †, and a daughter, Lady
 ' Jane Douglas.

' The Marquis of Douglas died in
 ' 1700, leaving his son and daughter
 ' both infants.

† 18th April, 1703.

' Lady

Lady Jane Douglas was universally
 acknowledged to be one of the most
 accomplished women of her age or
 country, remarkably handsome in her
 person, liberal in her mind, and en-
 gaging in her manners. It was then
 thought, That she would prove one of
 the happiest of her family, and be
 courted by persons of the first rank.
 But some strange fatality having pre-
 vented a most advantageous match tak-
 ing place betwixt her and a nobleman
 of the first rank and fortune in Scot-
 land; Lady Jane was so much piqued
 with some private incidents in this af-
 fair, which happened in the year 1721,
 that from that time till she was pretty
 far advanced in life, she seemed resolved
 to refuse any other offers that might be
 made her. However, it so happened,
 that in the month of August 1746,
 Lady Jane being then in the 48th year
 of

‘ of her age, was privately married to
 ‘ John Stewart, Esq; who afterwards be-
 ‘ came Sir John Stewart of Grandtully.

‘ The warmest friends of Lady Jane
 ‘ could not approve of this step, as Mr.
 ‘ Stewart was a younger brother, had
 ‘ neither estate nor profession, and could
 ‘ not pretend to maintain her suitable to
 ‘ her high rank. They were therefore
 ‘ justly afraid, That this step of her mar-
 ‘ riage, instead of reconciling her bro-
 ‘ ther, the duke, to her, (for at this time
 ‘ there was a quarrel betwixt them) it
 ‘ would have the direct contrary effect.
 ‘ Lady Jane herself too seems to have
 ‘ been apprehensive of this, and always
 ‘ gave that as a reason for her trying so
 ‘ long to conceal the marriage betwixt
 ‘ her and Mr. Stewart.

‘ A

A few days after the marriage which
 happened at Edinburgh, Lady Jane set
 out for England, accompanied by Mrs.
 Hewit (who attended her in the quality
 of a companion) with her two maid
 servants, *Isabel Walker* and *Effy Caw*.
 At Huntingtown in England, they were
 met by Mr. Stewart, from whence they
 went to Harwich, where they embarked
 for Holland, and took up their resi-
 dence at the Hague, where they staid
 from the beginning of September, to
 the end of December 1746. From the
 Hague they went to *Utrecht*, where
 they resided till April 1747. During
 the whole time of their stay in Holland,
 the marriage was kept a secret. Lady
 Jane's bad state of health, was the
 reason given by her for her going a-
 broad, as on that account, travelling
 and mineral waters were become neces-
 sary

' fary for her. It appears from the proof
 ' in this cause, that soon after their ar-
 ' rival at the Hague, they had made ap-
 ' plication to the British minister there to
 ' obtain for Lady Jane a pass to go to the
 ' waters of Bourbon in France ; but that
 ' having been refused them, they after
 ' having staid at Utrecht as formerly
 ' mentioned, set out for Aix-la-Chapelle,
 ' where they arrived upon the 26th
 ' April 1747. When arrived at Aix-la-
 ' Chapelle, they took up their lodgings
 ' in the house of one *Madame Terwis*,
 ' where they continued to lodge till the
 ' 10th of August that year that they went
 ' to Spaw : There they staid about a fort-
 ' night, when they again returned to
 ' Aix-la-Chapelle, and lodged in the
 ' house of Madame Champeniois : from
 ' this house they returned again to their
 C ' lodgings

' lodgings at Madame Tewis's, where
 ' they staid till the 5th January 1748.
 ' On that day they again changed their
 ' lodgings, and went to the house of Ma-
 ' dame *Scholl*, where they remained till
 ' the end of March, and then they re-
 ' moved to the house of Madame Gil-
 ' lessen, where they continued to stay till
 ' they quitted Aix-la-Chapelle the 21st
 ' May 1748.

' It was at Aix la Chapelle, and some
 ' time in the month of March 1748, that
 ' the marriage which formerly had been
 ' kept secret, was communicated to se-
 ' veral persons; and the reason given for
 ' this by Mr. *Hewit*, and by others of
 ' the witnesses, was, Lady Jane's ad-
 ' vanced pregnancy, which could not be
 ' longer concealed. At this time it ap-
 ' pears

‘ pears from the proof, That Lady Jane
 ‘ and Mr. Stewart had determined to
 ‘ leave Aix-la-Chapelle, giving as their
 ‘ reason the expensiveness of the place,
 ‘ by the resort of foreigners of all nations
 ‘ on account of the approaching congress,
 ‘ but, according to the argument of the
 ‘ plaintiffs, they left Aix-la-Chapelle on
 ‘ account of its not being a large enough
 ‘ place to execute the plan of imposture;
 ‘ and that they had by this time fixed
 ‘ upon their journey to Paris, as being
 ‘ the properest place to perpetrate the
 ‘ crime of procuring false children. For
 ‘ this purpose the plaintiffs set forth,
 ‘ That they gave many false accounts of
 ‘ the place they intended to go to after
 ‘ they should leave Aix-la-Chapelle, as
 ‘ well as many various pretences for their
 ‘ leaving that place. Amongst these the

' principal were, the want of the free
 ' exercise of the protestant religion; the
 ' expensiveness of the place; the want of
 ' the proper assistance for her delivery,
 ' and the desire to conceal her marriage;
 ' all which, according to the plea of the
 ' plaintiffs, are now proved false, though
 ' given as reasons at different times and
 ' to different persons, for this unseason-
 ' able journey from Aix-la-Chapelle.
 ' However this be, it is certain, that Lady
 ' Jane and Mr. Stewart, did, after pro-
 ' viding themselves with a letter of cre-
 ' dit upon a banker in Paris for 1978
 ' livres, set out from Aix-la-Chapelle
 ' upon the 21st May 1748, and arrived
 ' at *Liege* the same day, attended by Mrs.
 ' Hewit and the two maid servants, Isa-
 ' bel Walker, and Effy Caw; and that
 ' they here left a man servant, who durst
 ' not

' not enter France, on account of his be-
 ' ing a deserter from the army. They
 ' continued at Liege from the 21st till the
 ' 24th or 25th of that month, when they
 ' set out for Sedan in the stage coach, and
 ' arrived there upon the evening of the
 ' third day after their departure from
 ' Liege. At Sedan they stopt from the
 ' 27th of May till the 5th of June; and
 ' on that day they set out from Sedan
 ' for Reims, likewise in the common
 ' stage coach, and arrived there after a
 ' journey of three days, upon the even-
 ' ing of the seventh of June. Upon
 ' their arrival at Reims, they took up
 ' their lodging in the house of one Mr.
 ' Hibert, which lodging was procured
 ' to them by Mr. Andrieux, wine-mer-
 ' chant there, to whom they had been
 ' recom-

‘ recommended from Aix-la-Chapelle, by
‘ one Mr. Florentine,

‘ At *Reims* they continued till the 2d
‘ of July, upon which day Lady *Jane*,
‘ Mr. *Stewart*, and Mrs. Hewit, set out
‘ for Paris in the public voiture or stage-
‘ coach, leaving behind them their two
‘ maid servants, Isabel Walker, and Effy
‘ Caw; and upon the evening of the 4th
‘ July they arrived in Paris, and took up
‘ their quarters at an inn called Hotel-
‘ Chaalons, kept by one Godfroy,

‘ Having thus far stated the facts upon
‘ which much proof has been brought by
‘ the respective parties, I shall not draw
‘ any inferences whatever from them, but
‘ proceed to give you the defenders ac-
‘ count

' count of what happened to Lady Jane
 ' and Mr. Stewart, and of the circum-
 ' stances of his birth, as they stand related
 ' by Mr. Stewart and Mrs. Hewit, who
 ' were both examined again and again in
 ' this great cause. The substance of their
 ' testimonies is as follows : " That after
 ' remaining two or three days in the Ho-
 ' tel Chaalons, they went to another
 ' house kept by a woman called *La Brun*
 ' who let lodgings ; and that in this house
 ' Lady Jane was brought to bed on the
 ' 10th July of the defendant and his
 ' twin brother : That afterwards finding
 ' it necessary to leave this house, they
 ' did, about the 19th or 20th July, take
 ' lodgings in the Hotel d' Anjou kept by
 ' one Michelle, where they remained till
 ' they

‘ they left Paris about the 3d or 4th of
 ‘ August. That from Paris they went
 ‘ to the village of Dammartine for the
 ‘ benefit of fresh air; and that Lady Jane
 ‘ having recovered strength, they set out
 ‘ for Reims upon the 14th August: That
 ‘ the defendant being a strong healthy
 ‘ child, they brought him alongst with
 ‘ them to Reims, where he was publicly
 ‘ baptized in regular form: That the
 ‘ other twin having come into the world
 ‘ in a weak and sickly condition, he was
 ‘ left at nurse in the neighbourhood of
 ‘ Paris, under the inspection of *Pierre la*
 ‘ *Marre*, the man-midwife, who thought
 ‘ it necessary as soon as he was born to
 ‘ baptize or *ondoye* him according to form
 ‘ practised in the like cases by the mid-
 ‘ wives and accoucheurs of France: That
 ‘ while

' while at Reims Lady Jane became again
 ' with child, and miscarried: That hav-
 ' ing remained at Reims from August
 ' 1748, till November 1749, they in the
 ' beginning of that month set out again
 ' for Paris to bring their youngest child
 ' Sholto from the nurse who had the care
 ' of him: and having accordingly re-
 ' turned from Reims with that other
 ' child, they left that city on the 29th
 ' November, on their way to England,
 ' and arrived in London about the end of
 ' December 1749: That some time after
 ' their arrival in England, the youngest
 ' child, who was only *ondoyed* by the
 ' man-midwife, was formally baptized
 ' by a clergyman, in presence of the
 ' countess of Wigtoun and others. Both

D

' the

‘ the children were presented by them to
 ‘ their friends, and invariably treated by
 ‘ them as the real issue of Lady Jane
 ‘ Douglas.” This is the account which
 ‘ is given by the defendant, of the cir-
 ‘ cumstances attending his birth, and of
 ‘ the conduct of his parents before and
 ‘ after the delivery, till the time of their
 ‘ arrival in Britain. Upon her return to
 ‘ her own country, Lady Jane found her-
 ‘ self involved in the greatest difficulty
 ‘ and distress. The pension of 300 *l.*
 ‘ *Sterling per annum*, which had been
 ‘ formerly paid her by her brother the
 ‘ Duke, was withdrawn in July 1749.
 ‘ Mr. Stewart was sunk in debt, profe-
 ‘ cuted by his creditors, and thrown into
 ‘ jail. In this destitute condition there

' was application made for Lady Jane
 ' to his late Majesty, who was graciously
 ' pleased to bestow on her a pension of
 ' 300 *l. per annum*. However, Lady
 ' Jane and Mr. Stewart still continued in
 ' very deplorable circumstances. In so
 ' much, that when Lady Jane lived at
 ' Chelsea with her children, she was at
 ' different times reduced to the necessity
 ' of selling her cloaths and other trifling
 ' effects for the support of her family
 ' and her husband Mr. Stewart, who
 ' was then living within the rules of the
 ' King's Bench prison in Southwark. At
 ' this time, letters appear to have past
 ' betwixt them every day, a very great
 ' number of which have been preserved.
 ' In these letters, there is the most lively
 ' picture of their distress at the time,
 ' as well as the strongest affection and

‘ solicitude for their children, which they
 ‘ always speak of as being the only com-
 ‘ forts they had left.

‘ In the 1752, Lady Jane made a jour-
 ‘ ney with her children to Scotland, the
 ‘ principal design of which seems to
 ‘ have been, to endeavour a reconciliation
 ‘ with her brother the Duke of Douglas,
 ‘ and to learn from him the particulars
 ‘ of the charge exhibited against her,
 ‘ which she had heard by report, was her
 ‘ attempting to impose upon his family
 ‘ by false children: she accordingly re-
 ‘ paired to Douglas Castle with her chil-
 ‘ dren, but was refused admittance to
 ‘ her brother the Duke. It appears by
 ‘ letters which Lady Jane wrote soon
 ‘ after this to her brother, that the dis-
 ‘ appointment of not being allowed to
 ‘ see him, had thrown her into the deepest
 ‘ affliction;

‘affliction ; in so much, That, as she her-
‘self expresses it in one of her letters to
‘the Duke, it was impossible for her to
‘live any time with a load of such ex-
‘quisite grief.

‘Lady Jane some time after this return-
‘ed to London, leaving her children at
‘Edinburgh, under the inspection of
‘Isabel Walker formerly mentioned,
‘and recommended to the care of some
‘friends.

‘In May 1753, Sholto the youngest
‘twin died of a fever, an event which
‘seems to have thrown Lady Jane into
‘the deepest melancholy, and which, as
‘she said, was the cause of her death.

‘Lady Jane came from London to
‘Edinburgh soon after the death of her
‘youngest boy in a very decayed state
‘of

' of health, when it appears she made
 ' one other vain effort to be admitted to
 ' the presence of her brother the Duke.
 ' In November that year, this unfortu-
 ' nate Lady died at Edinburgh in a most
 ' wretched apartment, where she had
 ' lodged for some time before, destitute,
 ' not only of every thing suitable to her
 ' high rank, but even unprovided with
 ' the common necessaries of life. A
 ' few days before her death, though then
 ' reduced to the last extremity with pain,
 ' she took the Sacrament in one of the
 ' churches of the city of Edinburgh.
 ' Upon the very day she expired, or the day
 ' before, she called the defendant, her only
 ' surviving son, to her bed side, and there
 ' having solemnly blessed him, and hav-
 ' ing expressed the warmest anxiety and
 ' concern for his welfare, she recom-
 ' mended

' mended him to God *as her son*, in the
 ' most tender and pathetic manner. Thus
 ' died Lady Jane Douglas. It is not
 ' certain as yet, what character she will
 ' bear in future times. If the plea of
 ' the plaintiffs shall be sustained, this
 ' will represent her as one of the most
 ' abandoned of the human race; and if
 ' the defendant prevails in this suit, it
 ' is probable, That most people will hold
 ' her to have been one of the best and
 ' most distressed of her sex; equally an
 ' example of patience and of fortitude,
 ' under the cruel persecution of calumny
 ' and reproach, and one of the most last-
 ' ing pictures of afflicted suffering and
 ' injured innocence.

' Soon after the death of Lady Jane,
 ' Lady Schaw, who had been an intimate
 ' friend of hers, moved with a generous
 ' com-

‘ compassion for the unhappy state of the
 ‘ defendant, then an infant, left destitute
 ‘ by his mother, took him under her
 ‘ protection, and supported and educated
 ‘ him while she lived. Upon her death,
 ‘ a noble Lord, whose manners adorn
 ‘ his rank, took him under his care, and
 ‘ continued the same friendly assistance
 ‘ which Lady Schaw had shewn towards
 ‘ him.

‘ In the 1759, Mr. Stewart succeeded
 ‘ to the estate and the titles of his bro-
 ‘ ther Sir George Stewart, of Grand-
 ‘ tully. The first act of Sir John’s ad-
 ‘ ministration, was granting a bond of
 ‘ provision for upwards of 2500 *l.* “ to
 “ the defendant his son, by Lady Jane
 “ Douglas.”

‘ Mean-

' Meanwhile, the Duke of Douglas
 ' continued obstinate in his refusing to
 ' acknowledge the defendant as his ne-
 ' phew: for this obstinacy, on the part
 ' of the Duke, different reasons are given
 ' by the different parties. According to
 ' the defendant, it was owing to a train
 ' of imposition practised upon the Duke
 ' by interested men, to procure settlements
 ' in favour of the Duke of Hamilton;
 ' whereas the plaintiffs set forth, That it
 ' was owing to his full conviction of the
 ' imposture attempted to be brought in
 ' upon his noble family. However that
 ' be, in the year 1754, the Duke of
 ' Douglas executed a settlement of his
 ' whole real estate upon the Duke of
 ' Hamilton, failing heirs of his own
 ' body: And in the 1757, he executed a
 ' second deed, in favours of the same
 ' series of heirs, in which he declared it

E

' to

' to be his intention, That the son of his
 ' sister should in no event succeed to his
 ' estate. The Duke of Douglas had,
 ' during the far greater part of his life,
 ' so entirely withdrawn himself from the
 ' world, and had lived in such constant
 ' retirement at his castle at Douglas, That
 ' there was little reason to expect he
 ' would ever think of marriage, though
 ' his entering into that state of life was
 ' an event much wished for by every
 ' friend of his family. However, the
 ' Duke disappointed the public expecta-
 ' tions; for in the year 1758, he entered
 ' into a marriage with the present Dut-
 ' chess, which, by what followed, seems
 ' to have been an event highly favourable
 ' to this defendant. The Dutchesse seems
 ' immediately to have espoused his cause,
 ' with all that warmth which is natural

‘ to

‘ to those that think they act upon the
 ‘ side of truth and humanity. But, per-
 ‘ haps, her Grace was rather too eager
 ‘ and keen in endeavouring to alter the
 ‘ sentiments of the Duke of Douglas,
 ‘ with respect to the birth of the defen-
 ‘ dant, whether these sentiments were
 ‘ the effect of imposition, or of real
 ‘ conviction upon his part: Which ever of
 ‘ these was the truth, it is certain, That
 ‘ the Duke and Dutchess quarrelled upon
 ‘ this point; and that their quarrel gave
 ‘ rise to a separation betwixt them. But
 ‘ this did not continue long, the Duke and
 ‘ his Dutchess were soon by the media-
 ‘ tion of some friends brought together,
 ‘ and effectually reconciled to one another.
 ‘ In the year 1759, being immediately
 ‘ after this reconciliation had taken place,
 ‘ the Duke entered into what is called in

' our law, a *post-nuptial contract* of mar-
 ' riage with the Dutchess, wherein fail-
 ' ing issue of his own body, and in case he
 ' should not thereafter appoint any other
 ' heir, he devises his whole dukedom of
 ' Douglas to his *own nearest heirs and*
 ' *assigns whatsoever*, without making any
 ' exception as to the son of his sister Lady
 ' Jane.

' Upon the 5th January 1760, the
 ' Duke revoked and cancelled the settle-
 ' ments 1754 and 1757, whereby his
 ' estates stood devised to the family of
 ' Hamilton. In summer 1761, the Duke
 ' of Douglas was seized with a distemper,
 ' which in the opinion of his physicians
 ' would quickly prove mortal. The
 ' Duke was of the same opinion himself;
 ' and therefore on the 11th July 1761,

‘ when he was drawing near his end, he
 ‘ executed an entail of his whole estate,
 ‘ in favours of the heirs *whatsoever* of
 ‘ *the body of his father James Marquis of*
 ‘ *Douglas*, remainder to Lord Douglas
 ‘ Hamilton, brother to the present Duke
 ‘ of Hamilton, &c. &c. And of the
 ‘ same date, the Duke executed another
 ‘ deed, setting forth, That as in the event
 ‘ of his death without heirs of his body,
 ‘ *Archibald Douglas, alias Stewart*, a
 ‘ minor, and son of the deceased Lady Jane
 ‘ Douglas his sister, would succeed to
 ‘ him in his dukedom of Douglas, he
 ‘ therefore by that deed, appoints the
 ‘ Dutchess of Douglas, the Duke of
 ‘ Queensbury, and several other noble
 ‘ and honourable persons to be his tutors
 ‘ and guardians.

‘ Upon

‘ Upon the Duke’s death *, which hap-
 ‘ pened ten days after his executing the
 ‘ last mentioned deed, the defendant’s tu-
 ‘ tors proceeded without delay to vest him
 ‘ in the feudal right of the estate of
 ‘ Douglas, by getting him served heir of
 ‘ entail and provision to his uncle : And
 ‘ in order to wipe away any doubts which
 ‘ might remain concerning his birth, it
 ‘ was thought proper to enter into a fuller
 ‘ proof of it than is usual on such occa-
 ‘ sions ; accordingly such witnesses as
 ‘ were in and about Edinburgh at the
 ‘ time, and had access to know any thing
 ‘ concerning Lady Jane’s situation when
 ‘ abroad, were called to give evidence be-
 ‘ fore the jury, upon whose verdict it
 ‘ was to depend, whether the defendant
 ‘ should be served heir or not ? And as
 ‘ the Duke of Hamilton had also taken

* 21 July 1761.

' out brieves from His Majesty's Chan-
 ' cery, for being served *heir male* to the
 ' late Duke of Douglas, the examina-
 ' tion of these witnesses was attended by
 ' council for Duke Hamilton. The proof
 ' brought on the part of the defendant,
 ' or claimant, as he was then called, ap-
 ' peared so satisfactory to the jury, that
 ' they immediately served him heir to the
 ' Duke of Douglas, or in other words,
 ' they found by their verdict, that he was
 ' the son of Lady Jane.

' The evidence produced to the jury,
 ' and upon which they returned the above
 ' verdict, finding the claim proved, con-
 ' sisted of the following particulars, 1st.
 ' The depositions of several witnesses,
 ' That Lady Jane appeared to them to be
 ' with child while at Aix-la-Chapelle
 ' and other places. 2dly. The direct and
 ' positive

‘ positive testimony of Mrs. Hewit (for-
 ‘ merly mentioned) to the actual delivery
 ‘ at Paris upon 10 July 1748. 3dly, The
 ‘ depositions of other witnesses with re-
 ‘ gard to the claimant’s being *owned* and
 ‘ *acknowledged* by Lady Jane and Sir
 ‘ John Stewart to be their child, and the
 ‘ *habite and repute* of the country. 4thly,
 ‘ A variety of letters which had past be-
 ‘ twixt Sir John Stewart, Lady Jane
 ‘ Douglas, Mrs. Hewit and others re-
 ‘ specting the claimant’s birth. 5thly,
 ‘ Four letters said to have been written
 ‘ by Pierre La Marre, who, according to
 ‘ the defendant’s account, was the accou-
 ‘ cheur to the delivery of Lady Jane; and
 ‘ which, as the plaintiffs assert, were pre-
 ‘ sented to the jury as so many true and
 ‘ genuine letters; but which, according
 ‘ to their plea, are incontestably proved

‘ to

‘ to have been forged and fabricated by
‘ *Sir John Stewart himself*, for the spe-
‘ cial purpose of supporting his false as-
‘ sertion, That these children were the
‘ genuine offspring of Lady Jane Dou-
‘ glas.

‘ Soon after this verdict in favours of
‘ the new defendant, he completed his
‘ title by a charter from the crown, and
‘ was put in possession of the estate as
‘ heir of his uncle the Duke of Douglas.

‘ Actions were afterwards raised at the
‘ instance of the Duke of Hamilton, and
‘ of Douglas Earl of Selkirk, for de-
‘ claring their rights to certain parts of
‘ the family estate, which the Duke main-
‘ tained were limited to heirs male by a
‘ deed in the 1630. And which the Earl
‘ affirmed were descendable to him in

‘ virtue of a deed executed in the 1699.
‘ Notwithstanding these disputes about
‘ the property of this great estate, Mr.
‘ Douglas the defendant was by the court
‘ of session maintained in possession there-
‘ of; and their lordships afterwards pro-
‘ nounced judgment in his favours,
‘ against both the noble pursuers.

‘ Soon after this judgment given by
‘ the court of session in favours of the
‘ defendant, the present action, to prove
‘ the defendant *not* the son of Lady Jane
‘ Douglas, took its rise.

‘ It appears that the guardians of the
‘ noble plaintiff the Duke of Hamilton
‘ were by no means satisfied with the
‘ proof as it stands in the defendant’s ser-
‘ vice, and that they had resolved to in-
‘ vestigate

' vestigate the matter to the bottom, in
 ' order to discover whether it was an im-
 ' position or not: Their motive for this
 ' inquiry they have all along set forth,
 ' to have been their duty to their *ward*,
 ' and their only object in it their dis-
 ' covery of *truth*. In this view it was, as
 ' the plaintiffs set forth, that they au-
 ' thorised Mr. *Andrew Stewart*, one of
 ' their own number, to repair to Paris,
 ' there to make a full discovery whether
 ' the delivery was real or fictitious. Mr.
 ' Stewart went to France in August 1762;
 ' where, after employing a good deal of
 ' time in making his enquiries, he com-
 ' municated them to the other *guardians*
 ' of the Duke of Hamilton in Scotland:
 ' The result of which enquiries, accord-
 ' ing to the plaintiffs, was, that the
 ' whole story of the pretended delivery,

‡ as it is set forth in the *service*, was an
 ‡ absolute fiction: that there were no
 ‡ such persons existing at Paris in the
 ‡ year 1748, as Pier-La-Marre, the sup-
 ‡ posed *accoucheur*, or Madame *La Brune*,
 ‡ the woman in whose house it was pre-
 ‡ tended Lady Jane had been delivered.
 ‡ That at the time when, by the proof in
 ‡ the service, Lady Jane was supposed to
 ‡ have been confined to bed *after her de-*
 ‡ *livery* in the house of this Madame La
 ‡ Brune, she was residing in another
 ‡ house in Paris in perfect health; and
 ‡ that the *four letters* produced and re-
 ‡ ferred to in the service, as having been
 ‡ written by *Pier La Marre*, the man-
 ‡ midwife, who had delivered Lady Jane,
 ‡ were not the work of a *Frenchman*, but
 ‡ had been fabricated by a *British* person.
 ‡ Upon this account of the discoveries
 ‡ made

made by Mr. Stewart in Paris, three
 separate actions of *reduction* of the de-
 fendant's service were instituted; and
 afterwards by the court of session con-
 joined; one at the instance of the Duke
 of Hamilton, another at the instance of
 Lord Douglas Hamilton, founded upon
 the Duke of Douglas's entail of the
 11th July 1761; and a third at the
 instance of Sir Hugh Dalrymple of
 Northberwick, baronet, one of the
 many *heirs of line*, supposing the de-
 fendant to be set aside.

In order that you may understand the
 forms established in Scotland with re-
 spect to the *reduction of services*, it is
 necessary for me to premise the follow-
 ing observations. By the ancient law
 of Scotland, as well as by the law of
 Eng-

‘ England to this day, every question of
 ‘ *property* was tried by *juries*. But after
 ‘ the institution of the court of session, or
 ‘ *college of justice*, by king James V. of
 ‘ Scotland, the practice of jury-trials in
 ‘ *civil matters* soon went into total dis-
 ‘ use, excepting only in some cases of
 ‘ trial proceeding upon what are called
 ‘ *not pleadable brieves*, so called because
 ‘ they *may* proceed without a *contra-*
 ‘ *dictor*; amongst which the most re-
 ‘ markable is the brieve of *Mortancestry*,
 ‘ which is the king’s warrant issuing from
 ‘ his chancery to the judge ordinary of
 ‘ the place, desiring him to enquire by a
 ‘ jury of *probre ac fideles homines patrie*,
 ‘ into certain points mentioned in the
 ‘ brieve, amongst which the principal is,
 ‘ Whether the person claiming to be heir
 ‘ to the defendant is really so connected
 ‘ with

‘ with him or not? and to report their
 ‘ *verdict* into the chancery alongst with
 ‘ the brieve.

‘ The procedure of such services pro-
 ‘ ceeding upon brieves, is often very loose
 ‘ and uncertain, and often liable to error
 ‘ and mistake. The law therefore has
 ‘ wisely appointed a remedy for wilful
 ‘ wrongs or errors committed by the jury
 ‘ upon such services. The ancient re-
 ‘ medy provided by the law of Scotland
 ‘ was a new trial of the same fact by a
 ‘ grand inquest or jury consisting of
 ‘ forty-five men, called *an inquest of*
 ‘ *error*. But the present method of re-
 ‘ viewing the verdicts of juries is by
 ‘ actions of *reduction* before the court of
 ‘ session, who being in this respect come
 ‘ in place of the grand inquest or jury,
 ‘ are

' are bound down by no other rules than
 ' what would be binding upon a jury in
 ' like circumstances ; or, in other words,
 ' they are to consider the whole of the
 ' *evidence* brought both by the plaintiff
 ' and defendant, and to pronounce their
 ' *verdict* accordingly. If the court of
 ' session shall *sustain the reasons of reduc-*
 ' *tion*, then the plaintiffs prevail in *their*
 ' *suit*. If they shall *assailzie the defen-*
 ' *dant*, such judgment maintains him in
 ' his possession upon the verdict of the
 ' jury, and finds such *to be sufficient evi-*
 ' *dence*.

' From these principles it seems to fol-
 ' low, that the *onus probandi* does not lie
 ' wholly upon the plaintiff, as in com-
 ' mon cases, but that it lies mutually
 ' upon both the plaintiff and the defen-
 ' dant.

' dant. The plaintiff *may*, if he pleases,
 ' bring further evidence to support the
 ' falsehood and insufficiency of the ver-
 ' dict; and if the defendant thinks he
 ' cannot rest safely upon the proof in the
 ' service, he may bring what other proof
 ' he can to maintain its *sufficiency* and
 ' *truth*.

' What I have now said will, I hope,
 ' sufficiently explain to you the forms of
 ' our procedure in the case of reductions
 ' of services, and prevent you from being
 ' perplexed with any detached accounts
 ' of the proceedings throughout this
 ' great trial, the rise, origin, and progress
 ' of which I have stated so minutely.

' I must now come to an article which
 ' has made a great figure in the present

G

' suit;

‘ fuit, and that is the procefs *ex plainte*
 ‘ brought by Mr. Andrew Stewart when
 ‘ in Paris, in December 1762, before the
 ‘ *Criminelle Chambre* of the parliament
 ‘ *there* ; accusing Sir John Stewart and
 ‘ Mrs. Hewit of the crime of *partus*
 ‘ *suppositio*, or procuring false children
 ‘ *when in France*.

‘ This action, which is commonly
 ‘ known by the name of the *Tournelle*
 ‘ *procefs*, was brought before the parlia-
 ‘ ment of Paris soon after the commence-
 ‘ ment of the other actions at the instance
 ‘ of the plaintiffs before the courts here.
 ‘ This being the case, and as Sir John
 ‘ Stewart and Mrs. Hewit were both
 ‘ then living at home in Scotland, the
 ‘ defendant has all along complained,
 ‘ That the sole intention of it was to pre-
 ‘ possess

' possess and influence the witnesses by
 ' an ex parte examination upon oath,
 ' as well as to create a general and unfair
 ' prejudice against him in France. That
 ' by the rules of the proceedings in the
 ' *Tournelle*, the proofs adduced and writ-
 ' ings exhibited in the cause were kept
 ' secret from the defendant, by which
 ' means the plaintiffs reaped all the ad-
 ' vantage of the information obtained by
 ' that process, while the defendant was
 ' kept totally in the dark, as to every
 ' thing that past. That the witnesses,
 ' by having been examined in the *Tour-*
 ' *nelle*, had contracted a prejudice in fa-
 ' vour of the plaintiffs story, and that
 ' by having been once sworn there, with-
 ' out being cross examined by the de-
 ' fendant, they were fixed down to swear
 ' again in the same manner that they had

' formerly done, when they should come
 ' to be examined by authority of the
 ' courts of law in Scotland. And the
 ' defendant further complained, That by
 ' this criminal suit's being commenced in
 ' France against Sir John Stewart his fa-
 ' ther, Sir John was thereby prevented
 ' from going to France, in order to assist
 ' those employed on the part of the de-
 ' fendant, in discovering the persons and
 ' places which both parties were in search
 ' of: and lastly, the defendant complained
 ' of this *Tournelle* process, as being there-
 ' by deprived of the aid of the police
 ' of Paris, while the plaintiffs enjoyed
 ' that advantage, and because it give rise
 ' to the publication of what is called in
 ' France a *Monitoire*, and which the de-
 ' fendant holds to have been a most un-
 ' fair method of obtaining evidence in
 ' this cause. That as no *corpus delicti*

appeared, and as the object of the en-
 quiry was whether a crime had been
 truly committed or not? nothing could
 be more gross and subversive of justice,
 than to begin the suit with publishing
 to the world a minute detail of facts
 and circumstances, charging the crime
 as already committed, and positively
 asserting in express terms, That the
three persons accused, and therein par-
 ticularly *described* (although not named)
 were guilty of the crime of *partus sup-*
positio. To these objections, on the
 part of the defendant against the plan-
 tiffs conduct in bringing the suit before
 the parliament of Paris, and of the
 hardships he has suffered in consequence
 of that action, the plaintiffs gave in
 long and particular answers, which it
 is impossible for me to find room here
 to repeat, but which, as an impartial
 man,

' man, willing to do justice to every
 ' side, I cannot omit mentioning to you.
 ' And in the first place, I must observe,
 ' That as both the court of session and
 ' the house of Peers have in so far con-
 ' demned that action before the *Tournelle*,
 ' as to order the *plaintes* to be with-
 ' drawn, and have admitted the witnes-
 ' ses examined before the parliament of
 ' Paris, only *cum nota*, as we express it,
 ' reserving all objections to their credi-
 ' bility, it would appear now, That the
 ' plaintiffs did at least commit an error
 ' in bringing that action before the par-
 ' liament of Paris. However, in justi-
 ' fication of themselves, the plaintiffs
 ' set forth, That they brought this ac-
 ' tion in consequence of the advice of
 ' some of the most eminent lawyers in
 ' France, whose original signed opinion
 ' is in process, and in consequence too of
 ' the

‘ the opinion of some of the most emi-
 ‘ nent lawyers in Britain, who all con-
 ‘ curred in opinion, That as *suppositio*
 ‘ *partus* was in its nature criminal, and
 ‘ gave ground for a *criminal action*, it
 ‘ was competent to bring such action in
 ‘ France, as by the general rules of law
 ‘ a crime ought to be tried in the country
 ‘ where it is committed. And that these
 ‘ *lawyers* were further of opinion, That
 ‘ as the action was clearly *competent*, so
 ‘ it was in the situation of matters at
 ‘ that time highly expedient.

‘ As to the motives of the plaintiffs
 ‘ for bringing this action, the principal
 ‘ seems to have been an apprehension,
 ‘ That by the death of witnesses and other
 ‘ actions, a proof of the facts they had
 ‘ asserted, if too long delayed, might be-
 ‘ come impossible ; and that if any of the
 ‘ wit-

' witnesses should happen to die after
 ' being examined before the parliament
 ' of Paris, and before their examination
 ' upon the court of sessions warrant, their
 ' depositions emitted before the parlia-
 ' ment of Paris might be here admitted
 ' as evidence, though not of the same
 ' weight as if it had been taken accord-
 ' ing to the laws and customs of *Scotland*.
 ' And farther, the plaintiffs acknow-
 ' ledged as a motive for bringing this
 ' *Tournelle* process, that they were appre-
 ' hensive, that the persons guilty of sup-
 ' posing children would not scruple to
 ' try any means either of gaining, put-
 ' ting out of the way, or perverting evi-
 ' dence, in order to cover their guilt.

' In answer to the particular complaints
 ' of the hardships which the defendant
 ' says he has incurred from that process,
 ' the

' the plaintiffs argued, That it was in
 ' vain for the defendant to alledge, That
 ' he was prejudiced by the witnesses
 ' being rendered partial to one side, or
 ' fixed down to tell the same story again
 ' upon oath as they had done before.
 ' That the imagination of a witness being
 ' rendered *suspicious* by having been exa-
 ' mined formerly on the same facts, is
 ' a thing unknown by the law or practice
 ' of any nation upon earth. That more
 ' particularly in Scotland, a witness after
 ' having been examined in the criminal
 ' court, may be examined in the civil
 ' court upon the same facts which he had
 ' formerly sworn to; and that in England,
 ' it happens every day that witnesses are
 ' examined before the King's Bench,
 ' upon the same facts they have sworn to
 ' before the court of Chancery, and be-
 ' fore the *petit* jury, upon the same facts

H

' they

' they have sworn to before the grand
 ' jury. That the method of examination
 ' before the *Tournelle* of Paris, was by
 ' no means liable to the objection stated
 ' by the defendant, in respect the wit-
 ' nesses were examined by a disinterested
 ' and impartial judge to whom the plain-
 ' tiffs had no more access than the de-
 ' fendant. That if the plaintiffs had
 ' had any design to use improper means
 ' to influence the witnesses, not such a
 ' trial as that complained of would have
 ' been the means, but private offers to
 ' the witnesses themselves. That the ob-
 ' jection stated by the defendant of his
 ' being denied the aids of *police* is not
 ' true in fact, for it appears by the proofs
 ' in this cause, That the defendant had
 ' as full access to these aids as the plain-
 ' tiffs had.

' With

' With regard to the objection stated
 ' by the defendant, That it was this
 ' process before the *Tournelle*, which pre-
 ' vented Sir John Stewart from going to
 ' France, to assist him in his discoveries,
 ' it is surprising it should have ever been
 ' insisted on by the defendant, since it is
 ' clear, that this apprehension upon the
 ' part of Sir John, of the consequence
 ' of his going into France, is one of the
 ' strongest presumptions of the falsehood
 ' of the story told by him: For upon the
 ' supposition of the truth of the birth,
 ' it was impossible but that Sir John must
 ' have been able to point out *some per-*
 ' *sons*, or to ascertain some *circumstances*
 ' which would infallibly have evinced his
 ' veracity to the utter confusion of his
 ' opponents. And that if Sir John could
 ' point out no person or circumstance

‘ that could serve to ascertain the truth
 ‘ of the birth, his going abroad was of
 ‘ no importance, and consequently the
 ‘ objection made to the *Tournelle* process
 ‘ upon pretence of its having prevented
 ‘ him, is in either view entirely ground-
 ‘ less.

‘ That as to the defendant’s complaint
 ‘ of the disadvantages sustained by him
 ‘ from the publication of the *monitoire*,
 ‘ they are entirely groundless. The
 ‘ publication of a *monitoire* was no inno-
 ‘ vation introduced for the special pur-
 ‘ pose of distressing this defendant, and
 ‘ rearing up evidence against him, as he
 ‘ would represent, but was exactly agree-
 ‘ able to the laws of France, and the con-
 ‘ stant established method of procedure in
 ‘ that

' that country, whereby the judges have
 ' the power of ordering a *monitoire* to be
 ' issued when the nature of the case seems
 ' to require it. That when the nature of
 ' a *monitoire* is rightly understood, it will
 ' rather appear that witnesses procured
 ' by this means are much more above
 ' suspicion than those procured in the
 ' ordinary way, by private enquiry made
 ' by the parties. In this last case there
 ' may be cause to suspect that witnesses
 ' may be influenced by improper means
 ' to come and give evidence, but there
 ' cannot be the smallest ground for ap-
 ' prehension that an injunction, under a
 ' penalty to every person to come and
 ' tell the truth, should induce any per-
 ' son to come and tell a falsehood. That
 ' as the *monitoire* offers no reward, the
 ' only motives by which the witnesses
 ' who

' who appear in consequence of it can be
 ' supposed to be actuated, are those best
 ' of motives, a sense of duty, and an
 ' obedience to the lawful commands of
 ' their superiors. That fewer bad conse-
 ' quences are to be apprehended from the
 ' publication of a *monitoire*, than what
 ' may seem to follow a practice extremely
 ' common in this country, that of pub-
 ' lishing *advertisements* in the newspapers
 ' concerning facts of which *information*
 ' is wanted, and that often under a *re-*
 ' *ward* to the informer. In this case it
 ' is not difficult to suppose that persons
 ' may be prevailed on by the hopes of a
 ' reward, to pretend to the knowledge of
 ' facts of which they know nothing: but
 ' it is impossible to figure a temptation
 ' which any man can have to give infor-
 ' mation against a person not so much as
 8 ' named,

' named, without any hopes of a reward,
 ' and when he knows that his informa-
 ' tion is not even to be communicated to
 ' the person in whose favour it may turn
 ' out.

' This much for the *Tournelle process*,
 ' the proceedings in which have made so
 ' great a noise in this country, and which
 ' for a considerable time put a stop to the
 ' going out of a proof upon the autho-
 ' rity of the court of session. However,
 ' the way being at last cleared by the
 ' discussion of several questions concern-
 ' ing this *Tournelle process*, the plaintiffs
 ' at last obtained what we call *an act and*
 ' *commission* to be executed in France and
 ' other places abroad, whereby they were
 ' allowed to prove the particular *conde-*
 ' *scendance* or *specification* of facts which
 ' they

' they offered to prove, together with all
 ' other facts and circumstances which
 ' they might think material to the issue :
 ' The defendant being also upon the same
 ' authority allowed to bring such further
 ' evidence as he should think necessary in
 ' support of his claim. This happened
 ' in July 1763; and in July 1765 the
 ' proofs were reported to the court of
 ' session, in bulk exceeding any thing of
 ' the kind that ever appeared in the
 ' course of judicial procedure: each of
 ' the parties proofs so reported having
 ' turned out to be above a thousand
 ' quarto pages *in print*. The proof
 ' brought by the defendant consists of
 ' three capital parts; 1st, Of what re-
 ' lates to the period prior to the 10th
 ' July 1748, being *the day* upon which
 ' the defendant maintains Lady Jane was
 ' delivered

‘ delivered of him and his twin brother,
 ‘ since deceast; and more particularly
 ‘ consists of the proof brought of Lady
 ‘ Jane’s *pregnancy* by the testimonies of
 ‘ her own domestics, and of numbers of
 ‘ people who had seen her frequently at
 ‘ Aix-la-Chapelle, Reims, and other
 ‘ places previous to her going to Paris.
 ‘ 2d, The proof of the birth itself, under
 ‘ which head is collected together all that
 ‘ has been said, written, or deposed to,
 ‘ relative thereto, by Sir *John Stewart*,
 ‘ *Lady Jane*, and Mrs. *Hewit*, the only
 ‘ persons who pretended to know any of
 ‘ the circumstances immediately concern-
 ‘ ing the birth. 3d, The proof brought
 ‘ of Lady Jane’s reconvalescence or seem-
 ‘ ing recovery after the 10th of July, be-
 ‘ ing the time of the birth, according to
 ‘ the defendant. And besides these facts

I

‘ which

' which have a direct tendency to prove
 ' the defendant to be the son of Lady
 ' Jane Douglas, innumerable other *circumstances*
 ' were insisted upon by the de-
 ' fendant's council in their pleadings at
 ' the bar, all tending to the same point.
 ' On the other hand, the plaintiffs have
 ' in their pleadings and memorial on this
 ' subject, arraigned their proofs in the
 ' following order, principally, 1st, They
 ' maintain that Lady Jane was not de-
 ' livered upon the 10th of July 1748,
 ' by evidence arising from the contents
 ' of various *letters* written by Sir John
 ' Stewart and Mrs. Hewit upon the 10th,
 ' 11th, and 22d July 1748. 2d, That
 ' Lady Jane Douglas was not delivered
 ' in the house of a Madame *La Brune*,
 ' nor in the presence of a Madame *La*
 ' *Brune* and her daughter ; under which
 ' head

‘ head they bring various circumstances
 ‘ to show that no such persons as the
 ‘ Madame *La Brune* in question, or her
 ‘ daughter, ever existed. 3d, That Lady
 ‘ Jane Douglas could not have been de-
 ‘ livered either upon the 10th of July, or
 ‘ in the house of a Madame *La Brune*,
 ‘ because, that upon that date, and during
 ‘ several days *preceding* and *subsequent*
 ‘ to the 10th July, Lady Jane Douglas,
 ‘ with her husband and Mrs. Hewit, re-
 ‘ sided at the *Hotel de Chaalons*, kept by
 ‘ Monf. Godefroi, where it is acknow-
 ‘ ledged she was not delivered : And this
 ‘ *alibi* the plaintiffs assert to be clearly
 ‘ proved by the testimony of Monf. and
 ‘ Madame Godefroi, as well as by certain
 ‘ books kept by them called *the livre*
 ‘ *d’èpence*, and *livre logeur*. 4thly, The
 ‘ plaintiffs set forth, that the falsehood

' of the delivery in the house of a Ma-
 ' dame *La Brune* upon the 10th July, is
 ' also proved by Lady Jane's situation
 ' upon her arrival at the house of Ma-
 ' dame *Michelle*, and by the incidents
 ' which happened during her continu-
 ' ance there. 5thly, Is stated the evi-
 ' dence of imposture arising from the
 ' studied concealment and mystery at
 ' Paris in July 1748, when Sir John and
 ' Lady Jane, with their confident Mrs.
 ' Hewit, carried with them from Paris
 ' to Reims *one child*; and from their re-
 ' petition of the same concealment and
 ' mystery, upon their return to Paris in
 ' November 1749, when the same three
 ' persons brought from Paris to Reims a
 ' *second child*. Lastly, the plaintiffs
 ' bring a proof, that at Paris, in the
 ' month

‘ month of July 1748, a male child, re-
 ‘ cently born, was carried off from his
 ‘ parents, of the name of *Mignon*; and
 ‘ that in the month of November 1749,
 ‘ another male child, born in the year
 ‘ 1748, was carried off from his parents,
 ‘ of the name of *Sanry*: That both these
 ‘ children were under false pretences
 ‘ carried off from their parents by British
 ‘ persons then at Paris, and that these
 ‘ *British* persons were Sir *John Stewart*,
 ‘ Lady *Jane Douglas*, and Mrs. *Hewit*.

‘ These, together with a most critical
 ‘ examination of the defendant’s proof
 ‘ of Lady Jane’s pregnancy, and a con-
 ‘ trary proof brought to redargue it, and
 ‘ the proof of the *non-existence* of the
 ‘ *Pier La Marre*, who the defendant
 ‘ affirms to have been the *accoucheur*,
 ‘ with

' with a proof of the *forgery* of the let-
 ' ters attributed to him, and of certain
 ' falsehoods which, as the plaintiffs assert,
 ' have been declared and sworn to by Sir
 ' *John Stewart*, Mrs. *Hewit*, and *Isabel*
 ' *Walker*, make the whole of the proofs
 ' offered by the plaintiffs to disprove
 ' this birth.

' Since I have mentioned Sir John
 ' Stewart's declaration, it may be neces-
 ' sary to inform you, that *this examina-*
 ' *tion* proceeded in December 1762, when
 ' the court of session issued a warrant
 ' against Sir John Stewart, upon a peti-
 ' tion for that purpose by the plaintiffs,
 ' to have him examined *in presence of*
 ' *the court*, upon the several particulars
 ' concerning this birth. Sir John was
 ' accordingly examined, though not put
 ' upon

' upon oath at this time (as he was after-
 ' wards) for *three whole days*, the ques-
 ' tions being all stated to him in *writing*
 ' on account of his *deafness*. Imme-
 ' diately upon this declaration being fi-
 ' nished, it was sealed up by the court to
 ' lie in *retentis*, to be afterwards opened
 ' and made a circumstance of evidence if
 ' the court should see cause. Accord-
 ' ingly in the summer session 1765, upon
 ' a petition by the plaintiffs for that pur-
 ' pose, the court of session ordered the
 ' seal to be taken off, and Sir John's de-
 ' claration to be made a part of the evi-
 ' dence. In that declaration, which re-
 ' lates chiefly to the critical period of
 ' July 1748, Sir John gives a minute
 ' account where he and Lady Jane resided
 ' while at Paris in July 1748, with an
 ' account of the delivery, the house where
 ' it

' it happened, and the persons present ;
 ' together with an account of *Pier La*
 ' *Marre* the *accoucheur*, his first acquaint-
 ' tance with him, which he says was at
 ' Liege in the 1721; the occasion and
 ' manner of his employing him, which
 ' he says was owing to an accidental
 ' meeting with him upon the streets of
 ' Paris, where La Marre told him he had
 ' come upon an affair *en epinasse*, and of
 ' his intercourse with him subsequent to
 ' the time of delivery. In this declara-
 ' tion Sir John further gives an account
 ' of the manner in which the two chil-
 ' dren were nursed, and what happened
 ' to these children during the period im-
 ' mediately subsequent to their birth. In
 ' one and all of which particulars the
 ' plaintiffs set forth Sir John has been
 ' guilty of falsehood, or that where the

‘ falsehoods do not appear, the story told
 ‘ by him is so incredible that it exceeds
 ‘ all belief.

‘ I have thus, Sir, not without a good
 ‘ deal of trouble and pains, given you
 ‘ what I take to be a *fair* and *impartial*
 ‘ view of this cause, so far at least, as
 ‘ to enable you to inform your friends
 ‘ and mine at ———, of the nature
 ‘ and tendency of so important a question.
 ‘ I must only observe to you before I con-
 ‘ clude this long letter, That Sir John
 ‘ Stewart and Mrs. Hewit have both
 ‘ died during the dependance of the pre-
 ‘ sent suit.

‘ A few days before his death, which
 ‘ happened in June 1764, Sir John emit-
 ‘ ted a solemn declaration in presence of
 ‘ two ministers and one justice of the

K

‘ peace,

' peace, declaring and asserting as *steping*
 ' *into eternity*, That the defendant and
 ' his deceased twin brother were both born
 ' of the body of Lady Jane Douglas his
 ' lawful spouse, *in the year 1748*. Mrs.
 ' Hewit, whom the plaintiffs charge with
 ' being an *accomplice* in the fraud, died last
 ' summer of a *lingering illness*, and to
 ' the last persisted, That all she had sworn
 ' about the birth of the defendant was
 ' truth, excepting some mistakes and
 ' errors as to *names and dates*, which she
 ' corrected in a letter to a reverend clergy-
 ' man of the episcopal communion, to
 ' whom, when visiting her in the way
 ' of his profession, she again and again
 ' *affirmed solemnly*, That what she had
 ' sworn as to the birth was TRUE.

' From all that I have said, it will evi-
 ' dently appear to you, That this great
 ' suit

' suit will resolve into this single question,
 ' Is the defendant the son of Lady Jane
 ' Douglas, or is he not ? So opposite are
 ' the propositions maintained by the re-
 ' spective parties. Of the truth a so-
 ' lemn judgment of the court of session,
 ' and probably thereafter of the House
 ' of Lords will soon *legally* assure the
 ' country : whatever doubts may remain
 ' in the breasts of honest men, upon
 ' which side soever it shall be determin-
 ' ed ; or whatever passionate murmur-
 ' ings may flow from such as have keenly
 ' attached themselves to one side. The
 ' truth lies somewhere, as it were in a
 ' great circle ; it is the business of honest
 ' and impartial men to search after that
 ' point in the circle, however great pains
 ' and great abilities it may require to hit
 ' it exactly. The question is of impor-

' tance upon account of the extensive
 ' estate which the defendant is in posses-
 ' sion of: But there is a great danger
 ' upon any hand. On the one, left
 ' courts of law shall, by unintentionally
 ' giving a wrong decision, sanctify *crimes*
 ' by giving them their full completion
 ' and intended effect, which would be
 ' the case if an impostor should inherit
 ' the estate of Douglas. On the other
 ' hand, there is a danger lest the sacred
 ' rights of justice be destroyed: The
 ' state of a man, to which he is entitled
 ' by *God* and *nature*, taken from him,
 ' and his innocent parents declared infam-
 ' ous and unjust, hung up to future
 ' times as lasting monuments of that
 ' shame and reproach which should ever
 ' attend the memory of the *worthless*
 ' alone, ages after their bodies have moul-
 ' dered into dust !

' As

' As to your request, That I should send
 ' you the memorials upon both sides of
 ' this cause, I will, if it is possible, obey
 ' it, though it is very difficult to procure
 ' them on account of the extreme great
 ' demand there is for them. Meanwhile
 ' as this great cause is now fixed by the
 ' court of session for the 24th June next,
 ' I would recommend it to you to make
 ' a journey from your house in the coun-
 ' ty of ——— (where you will pro-
 ' bably be at that time solacing yourself
 ' after the fatigues of the spring assizes)
 ' to Edinburgh ; where you will have an
 ' opportunity of hearing this solemn
 ' judgment pronounced by the court of
 ' session ; and as each of our judges will
 ' probably give their opinions at great
 ' length, you may have the additional
 ' advantage of taking down their *reports*
 ' in the same *expert manner* in which I
 ' know

‘ know you always do those in your own
 ‘ country. You will please write me if
 ‘ you approve of this journey, That I
 ‘ may be in town to receive you ; and
 ‘ apply to some of my friends of the Col-
 ‘ lege of Justice to get you admiffion to
 ‘ the court upon that great occafion.”—

Edin. April 17, 1767.

I am, &c,

I was at my country houfe accord-
 ingly, when I received the above diftinct
 and entertaining account, which not only
 gave entire fatisfaction to me, but alfo
 raifed my curiofity to fuch a pitch, that
 I refolved immediately to accept of my
 friend’s invitation, and go to Edinburgh
 to hear the decifion in this great caufe. I
 accordingly met my friend at Edinburgh
 by appointment, about the 20th June,
 as every body at that time expected the
 caufe would come on to a decifion upon
 the

the 24th of that month. However, the court of session being, it seems, desirous to have *Isabel Walker* (who is mentioned in the above letter to have been one of the maids attending lady Jane) examined in their own *presence* (she having been formerly sworn by commissioners appointed by the court) her examination, which lasted for some days, together with some other incidents in the course of business, obliged their lordships again to delay the cause till the 7th July, upon which day it accordingly came on.

Meanwhile I employed my time at Edinburgh in seeing the curiosities of that ancient city; amongst which, I was most pleased with a leisure view of that excellent collection of books belonging to the faculty of Advocates, and which is one of the finest that is in Great Britain,

tain, worthy of that respectable society to which it belongs. I also went every day into some one of their courts of justice, and was particularly pleased with the pleadings which I heard from some of the lawyers, who generally deliver themselves with great force and energy, though I think most of them speak with too much rapidity, which, however, may be owing to the *fervidum genus Scotorum*, as Tacitus says of their ancestors. I have no where seen any court of justice make a more respectable appearance than the court of session. This court consists of the Lord President, who is the same there as our Chief Justice here, and *fourteen* ordinary judges. They are called either by the stile of *Senators of the college of Justice*, or *Lords of council and session*; and from time immemorial they have acquired, by the courtesy of the country,

country, the title of *Lords* after the *name* of their respective estates, by which title they are distinguished in the course of their procedure in the court, as well as out of it.

It would appear, That at the time of the institution of this court, they were intended to serve as the great jury of the nation, to try the *fact* as well as to judge upon matters of law; and it is certain, That in all cases of proofs they act as a jury to this day.

The Lord President of the court of session has a vast province, it being his business to state and resume, if he shall think it necessary, all cases before the Lords, whether upon pleadings at the bar, reports made by the judges, or petitions wrote by the lawyers: and in

L

short,

short, to superintend the whole business of the court. He who at present fills that station, is thought by his country to be a man of great abilities and worth, of unequalled industry, and of great dispatch in business.

The Lord President has no vote but where the judges come to be equally divided; in which case his casting voice may determine the greatest matters of property, as it did actually in this very cause.

The 7th July being come, my friend procured me a seat in the court, which being small and much crowded, became intolerably hot; however, I made shift to sit it out and take down the reports of that day, and every other day, during the dependance of this great cause.

The judges took up no less than eight days in delivering their opinions upon the cause; and at last, by the president's casting voice, they pronounced a solemn judgment in favours of the *plaintiffs*. Immediately after that judgment I returned home to England, where having occasion to show the following summary of the reports to several of my friends, they advised me to publish them for the satisfaction of the public. This I at first declined, as I expected, that some of the Scots lawyers might have been led to gratify the curiosity of the public in this particular. But finding that many of the booksellers in London were making eager enquiries for the reports of the *Scots judges* upon this cause, I then resolved to present the public with my own collection, to which I thought the letter sent me from Scotland, might

serve as a proper *preface*, and therefore I got leave of my friend to publish it accordingly. And I am persuaded the reader will find, that the state of facts therein set forth, will enable him fully to understand the following reports, which otherways it would not have been in his power to have done. For this publication I shall make no apology, against it I dread no censure, and would have willingly prefixed my name to it, if I had thought it of any consequence. However, I have thought it right to inscribe the title-page with my *profession*, which is a presumption at least of *accuracy* and *fairness* in the following pages. I will not say, That every word as spoken by the judges will therein appear; but I am sure there shall be nothing there but what they did speak, making only a
 little

little allowance for supplying in my own words, some things which I could not take down exactly as spoken. I therefore flatter myself, That the following summary will do no discredit to the court of session; but that, on the contrary, it will give my countrymen a very high idea of the *abilities, learning and integrity* of all the Scots judges.

little allowance for supplying in my own
 words some things which I could not
 take down exactly as spoken. I there-
 fore have inserted the following
 summary will do no discredit to the cause
 of truth; but that, on the contrary, it
 will give my countrymen a very high
 idea of the abilities, honesty and im-
 partiality of all the great judges.

is there express in the following words:

~~The memorialist does not pretend to~~

up the acknowledgment of parents as

of itself, and

nor is there the least occasion to do

of the

that a

or even of

impressive evidence, and

The Lord President spoke first, and delivered himself to the following purpose:

‘ **S**INCE it may happen, my Lords,
‘ that this great cause may, by a
‘ division of your lordships, come to my
‘ casting vote, I think it proper now to
‘ give you my opinion, and to lay before
‘ you fully the reasons of it. In order to
‘ bring the case distinctly before your
‘ lordships, I shall first state the principles
‘ upon which the decision will proceed ;
‘ and these are contained in the 38th page
‘ of the defendant’s memorial, and which

‘ is

‘ is there exprest in the following words :

‘ “ The memorialist does not pretend to set
 ‘ up the acknowledgment of parents as
 ‘ of itself a *probatio probata* of filiation,
 ‘ nor is there the least occasion to do so
 ‘ in the present case ; but he contends
 ‘ that a proof of such acknowledgment,
 ‘ or even of habite and repute, is good pre-
 ‘ sumptive evidence, and sufficient ground
 ‘ for a jury to serve him. Such service
 ‘ may indeed be challenged upon evi-
 ‘ dence offered, that the child is suppo-
 ‘ sititious ; but so long as clear and unde-
 ‘ niable evidence is not brought of the
 ‘ challenge, the verdict and proof on
 ‘ which it proceeded will stand in full
 ‘ force.”

‘ In considering this great cause, I
 ‘ must notice that there are two kinds of
 ‘ evidence ;

' evidence ; 1st, Direct or demonstrative,
 ' which excludes the *possibility* of the case
 ' being otherwise than it is represented
 ' by that evidence : 2d, Circumstantiate
 ' or moral evidence, which is all that we
 ' can expect in such cases as this before
 ' us ; and therefore I lay it down as a
 ' rule to take the evidence without en-
 ' quiring into the bare possibility of the
 ' thing being otherwise. The simple fact
 ' before us resolves into this question, Is
 ' the defendant the son of Lady Jane
 ' Douglas, or not ? And I am sorry to say
 ' it, that my opinion in this great cause,
 ' after the utmost pains and attention
 ' which I could bestow, is clearly against
 ' the defendant ; and that by the evi-
 ' dence brought, I am fully and clearly
 ' *convinced*, that he is not the son of
 ' Lady Jane Douglas. If the story shall

M

' be

' be involved and attended with conceal-
 ' ment and mystery, and the tale told by
 ' the parties neither consistent nor uni-
 ' form, this should awaken the attention
 ' of judges, and lead us to weigh the
 ' whole of these circumstances in the ba-
 ' lance of justice, which I'm afraid in the
 ' present case will weigh down this defen-
 ' dant. Let us only consider the conduct
 ' of Lady Jane and Sir John, and see
 ' whether *this* will quadrate with the
 ' notion of a *real* birth, or a design of
 ' *imposture*. It is clear to me that their
 ' conduct is, upon the supposition of a
 ' true birth, improbable to the last de-
 ' gree. We see Lady Jane, when very
 ' far advanced in her pregnancy, under-
 ' taking a long, tedious, and fatiguing
 ' journey, and at the same time conceal-
 ' ing from the generality of her acquaint-
 ' tances

‘ tances the object of that journey,
 ‘ though it appears that some of her
 ‘ friends, such as Mr. Hepburn of Keith,
 ‘ knew that Paris was the real place of
 ‘ destination; and yet notwithstanding
 ‘ this, we see her lingering away her
 ‘ time at a most critical period, for a de-
 ‘ licate lady with child, at Liege, Sedan,
 ‘ and Reims. There is a strange incon-
 ‘ sistency in the story of the pregnancy
 ‘ from first to last. Why not discover it
 ‘ in a more solemn manner to her friends?
 ‘ Why ostentatiously tell it to one, when
 ‘ with art she concealed it from another?
 ‘ Why was the marriage and pregnancy
 ‘ so purposely kept concealed; and why
 ‘ was she ashamed to disclose it to all the
 ‘ world? Or if she was near the time of
 ‘ her delivery when at Reims, why did
 ‘ she not lay in there, where she could

' have so able assistance? or why, if she
 ' had resolved to leave Reims and to go
 ' to Paris, did they leave their two maid-
 ' servants, Isabel Walker and Effy Caw,
 ' behind them at Reims? By way of ex-
 ' cuse for their leaving Reims, where
 ' they might have had the best assistance,
 ' Mrs. Hewit has told us the wonderful
 ' story of a lady (whom she would have
 ' us believe was Mrs. Andrieux, though
 ' it is clear it was not she) giving Lady
 ' Jane the advice to leave Reims on ac-
 ' count of the unskilful practitioners
 ' there: And this story, according to
 ' Mrs. Hewit, was told Lady Jane about
 ' the 6th of *June*, and yet she does not
 ' leave Reims till the 2d July. And as
 ' an excuse for leaving the servant-maids
 ' at Reims, the same witness has told us,
 ' that they had no money to carry them
 ' to

' to Paris, though it is clear they might
 ' have been transported thither for the
 ' pauntry expence of twelve shillings.
 ' But if their money was run short at
 ' Reims, and Paris was the place of their
 ' destination, why linger at Reims, and
 ' be spending their last shilling in a place,
 ' where, if the critical hour overtook her,
 ' she might have been in so great distress
 ' for want of able assistance? I beg leave
 ' to observe another thing here, which is,
 ' that Mrs. Hewit has told us, that when
 ' they got to Paris they were run to their
 ' last guinea, whereas this is positively
 ' proved to be false, by the letter of cre-
 ' dit given them by Messrs. Khar and
 ' company, at Aix-la-Chapelle, upon
 ' Messrs. Paniers, bankers in Paris, for
 ' 1979 livres, and which letter of credit
 ' was payable either at Reims or Paris, or
 ' any

' any where else, when they should please
 ' to draw for it. Here it is worthy of
 ' remark, that both Sir John and Mrs.
 ' Hewit have said, that they got this
 ' money only upon the 10th July, the
 ' very day of the pretended birth. No
 ' mention at all of this at Godefrois; but
 ' if we consider the reason of fixing upon
 ' this special day, and saying, that the
 ' money was paid when in *La Brune's*,
 ' we shall find the falsehood necessary to
 ' carry on the story. I have said there
 ' were concealments and mystery in this
 ' affair from first to last; and I must now
 ' recall your lordships attention to a train
 ' of this kind on the part of Sir John,
 ' and of Lady Jane, both when at Reims
 ' and at Paris. It was amazing, that
 ' when at Reims, and when the preg-
 ' nancy was by their account so much
 ' advanced,

' advanced, that a delivery next day
 ' would have been no surprize, that they
 ' should have concealed the whole affair
 ' from Mr. Mallifer and his family, per-
 ' sons of high rank and character, and
 ' who seem to have shown great respect
 ' towards them, and revealed it to so
 ' many others? When an *Abbè Hibert*
 ' is daily walking with her, and by de-
 ' grees let into the secret, why was the
 ' same degree of confidence not shown to
 ' Mr. Mallifer and his family, from whom
 ' they were to have letters recommenda-
 ' tory to *Paris*? Why not acquaint Mr.
 ' Mallifer of the *real* design in going to
 ' Paris; at least why give him a false
 ' pretence for their going to Paris, which
 ' is clear from Mr. Mallifer's letter to
 ' Monf. Godefroi at the Hotel Chaalons,
 ' wherein Mr. Mallifer recommends them

' to

' to Monf. Godefroi as Scots people of
 ' quality " going to Paris *to buy things* ;"
 ' and therein begs of him the favour to
 ' take care that they be not imposed
 ' upon.

' When they arrive at Paris, the same
 ' concealment and mystery runs through
 ' the whole of their conduct. Does Sir
 ' John call for his countrymen there?
 ' Does he call for Sir William Stewart,
 ' or for the Chevalier Johnston, Mrs.
 ' Hewit's cousin german? No: He keeps
 ' himself entirely free of the haunts of
 ' his countrymen, though, if they were
 ' run to the last guinea, as Mrs. Hewit
 ' pretended, surely never man stood more
 ' in need of a friend. This is a strong
 ' circumstance indeed, and is not at all
 ' redargued by any thing the defendant
 ' has

' has said upon the subject, more espe-
 ' cially when we consider Sir John Stew-
 ' art's remarkable fondness for his coun-
 ' trymen. Even after the 10th of July,
 ' when their second child was, according
 ' to their account, left at nurse with a
 ' woman whom they knew nothing about,
 ' and under the care of Pier La Marre,
 ' whom they themselves acknowledge
 ' they did not know where to find;
 ' would they not at least have told the
 ' Chevalier Johnston of this? And be-
 ' fore they entrusted their sickly tender
 ' child into the hands of absolute stran-
 ' gers, would they not have instructed
 ' him to go and see it, or at least to have
 ' an eye upon the management he was
 ' to be under? When to all this I join,
 ' that all the letters wrote at that time
 ' by them from Paris to Britain, and else-

N

' where,

‘ where, are falsely dated from Reims,
 ‘ and have a direct tendency to make
 ‘ every mortal believe they were then at
 ‘ Reims, what conclusion can I possibly
 ‘ draw, but that a story so unfairly told,
 ‘ cannot be connected with truth. In-
 ‘ deed the falsehood appears so glaring,
 ‘ that it at once lays the foundation for
 ‘ its own detection. I have, in what I
 ‘ have said formerly, chosen to dwell
 ‘ mostly upon the proofs arising from
 ‘ the *res gestæ*, or conduct of the parties
 ‘ themselves; because I must own, that
 ‘ I do not rest very much upon many
 ‘ parts of the *parole* evidence in this cause,
 ‘ either upon the one side or other. I
 ‘ go on therefore to observe Sir John
 ‘ Stewart’s own accounts of the matter,
 ‘ and the falsehoods and forgeries prac-
 ‘ tised by him in order to gain belief to
 ‘ his

' his story. Leaving the story of Pier
 ' La Marre to be talked of afterwards,
 ' the first account of the matter given by
 ' Sir John Stewart of this matter, was in
 ' a note written by his own hand to lady
 ' Shaw in the year 1756, wherein he ex-
 ' pressly avers the delivery to have hap-
 ' pened in the house of Madame Mi-
 ' chelle, and at the same time Mrs.
 ' Hewit writes the Duke of Douglas a
 ' letter, expressly fixing upon the same
 ' house as the scene of the birth. There
 ' was then no mention of a La Brune's,
 ' and indeed this was never the house
 ' pitched on till after they both knew,
 ' that upon much enquiry by Sir James
 ' Stewart and Principal Gordon, the house
 ' of Madame Michelle had been found
 ' out, and that no delivery had happened
 ' there. Then and no sooner was it,

' that Sir John Stewart alters his tone,
 ' writes a second note, transferring the
 ' scene to La Brune's in the Fauxbourg,
 ' and rearing up there the same number
 ' of persons as were said to have been
 ' present when the delivery was averred
 ' to have been in Michelle's ; and in this
 ' story does Mrs. Hewit afterwards join
 ' with Sir John. Here come in properly
 ' the famous four forged letters from
 ' Pier La Marre, which appeared first to
 ' me upon Sir John Stewart's judicial
 ' declaration before your lordships : it
 ' will be remembered, that it was upon
 ' cross-questioning him, that the impro-
 ' bable account which he there gives of
 ' these letters, led to the full discovery
 ' of the forgery. But why forge letters
 ' to support the truth ? Could not La
 ' Marre himself be got ? or might not
 ' certi-

‘ certificates from him have been easily
 ‘ obtained? But, says the defendant,
 ‘ though I plead the acknowledgment of
 ‘ my parents as the legal presumption of
 ‘ my birth, yet I do not adhere to the
 ‘ circumstantiate account given of that
 ‘ birth by my parents. Strange indeed !
 ‘ that the acknowledgment of the parents
 ‘ should be pleaded by the son, and yet
 ‘ that that son should tell the court that
 ‘ his father had averred falsehoods. It is
 ‘ indeed no wonder that the defendant
 ‘ should endeavour to shake himself loose
 ‘ of this declaration, because it is no doubt
 ‘ the foundation of the strongest parts of
 ‘ the evidence against him. In this, how-
 ‘ ever, the hand of providence remarkably
 ‘ appears, ever watchful over the interests
 ‘ of truth, and discovering the train of
 ‘ falsehoods by means of those very per-
 ‘ sons

‘ sons who at first invented them. Who
 ‘ but the parent could be examined in this
 ‘ cause upon the particulars concerning
 ‘ the birth itself? Who knew any thing
 ‘ of the matter but Sir John and Mrs.
 ‘ Hewit only? For the many falsehoods
 ‘ contained in Sir John’s declaration, and
 ‘ more particularly for the story told by
 ‘ him of Pier La Marre, which is proved
 ‘ to be utterly false in every single in-
 ‘ stance, the failure of memory upon the
 ‘ part of Sir John, as is alleged, is by no
 ‘ means a sufficient excuse; for Sir John
 ‘ is exact and pointed in the whole of that
 ‘ account: more pains could not be taken
 ‘ by judges than were taken with him
 ‘ upon that occasion: Not only were the
 ‘ questions put to him in writing, and he
 ‘ allowed plenty of time to give his an-
 ‘ swers also in writing, but even after the
 ‘ first

' first day's examination, when he had
 ' signed the declaration so far as emitted,
 ' we then allowed him to retract any
 ' thing in which he had been mistaken,
 ' but he never once retracted either as to
 ' the cause of his acquaintance with La
 ' Marre, or his being a Walloon, or in-
 ' deed as to any other of the particulars
 ' of that long story told concerning La
 ' Marre.

' Leaving here Sir John's declara-
 ' tion, I proceed now to consider Lady
 ' Jane's account of the matter, which
 ' she gave to the late Countess of Stair.
 ' It is true, the Countess herself being
 ' dead, we can have no other proof of
 ' this account given by Lady Jane, but
 ' what is contained in the Oath of the
 ' Hon. Mrs. Primrose, the Countess's
 ' own

' own daughter, who has expressly told
 ' us the whole conversation as it was re-
 ' lated to her by her mother the Countess
 ' of Stair herself. We have no reason
 ' therefore to doubt this evidence, when
 ' we consider the sensible and prudent
 ' behaviour of the Countess of Stair upon
 ' all occasions, which would naturally
 ' lead her to talk with Lady Jane of the
 ' extraordinary story of the birth. What
 ' then appears upon the oath of Miss
 ' Primrose? Lady Jane giving as a rea-
 ' son for her not coming to Britain to be
 ' delivered of these children, That she
 ' was sick at sea, and that that might
 ' have endangered both her life and that
 ' of the children she was pregnant with :
 ' Giving us a reason for the extraordi-
 ' nary step of leaving Reims, where she
 ' could have had such able assistance, the
 ' very

' very wonderful story about the un-
 ' known Lady, who gave her advice to
 ' do so, on account of the danger of her
 ' being abused by the unskilfulness of the
 ' practitioners there. And when Lady
 ' Stair with great propriety noticed to
 ' Lady Jane the air of concealment, and
 ' of mystery attending the delivery at
 ' Paris; and that all things considered,
 ' her delivery should have rather been in
 ' a royal manner; what excuse does Lady
 ' Jane make to Lady Stairs? Says she,
 ' that was not possible for me to do, be-
 ' cause I was not in Paris above half an
 ' hour or an hour before the delivery
 ' happened. What can be a more false
 ' account of the matter than this? And
 ' to what can we attribute the answer
 ' given by Lady Jane, but that she was
 ' suddenly struck with the propriety of

' the observation made by the Countess
 ' of Stair as to her delivery, being so
 ' concealed and mysterious, and that it
 ' should rather have been after the royal
 ' manner. In which last observation, I
 ' suppose the Countess of Stair alluded
 ' to the famed story of Constantia, wife
 ' to Henry the Second, who hearing
 ' that there were suspicions propagated,
 ' as if she intended to procure a false
 ' birth, caused erect a royal tent in the
 ' midst of the army encamped in the
 ' plains of *Palermo*, and was there pub-
 ' licly delivered of her child.

' I come now to another particular of
 ' the conduct of Sir John Stewart and
 ' Lady Jane, and that is their never doing
 ' any thing to prove the birth, after they
 ' were acquainted of the doubts and sus-
 ' picious

‘ picious which were entertained con-
 ‘ cerning it.

‘ It appears from the oath of Walter
 ‘ Colvile, cousin to Mrs. Hewit, That
 ‘ he heard these reports at a very early
 ‘ period, about three or four weeks after
 ‘ he received the letter acquainting him
 ‘ of the birth; and it appears also from
 ‘ clear and undoubted evidence, That
 ‘ Lady Jane and Sir John were very early
 ‘ acquainted of these disadvantageous re-
 ‘ ports. Upon being so acquainted of
 ‘ these reports, it was surely natural for
 ‘ innocent people to have produced a
 ‘ proof, in order to vindicate their own
 ‘ character and the interest of their chil-
 ‘ dren; but what proof did they ever
 ‘ produce? Four forged letters, and Mrs.
 ‘ Hewit’s oath, which I believe to be

' false. Various pretences have been
 ' used for their not getting these necessary
 ' proofs. Lady Jane thought herself
 ' affronted, and her honour attacked.
 ' True, it may be so—But why not, then,
 ' do something to defend that honour and
 ' to ascertain without doubt the birth of
 ' her children for whom she had so great
 ' regard? Why was a Madame Tewis
 ' applied to, to prove the pregnancy,
 ' when they had at Paris a Pier La Marre
 ' who was the manmidwife, and a Ma-
 ' dame La Brune, and her daughter who
 ' were both witnesses to this alleged de-
 ' livery? Or if they wanted fully to
 ' ascertain the pregnancy by the best evi-
 ' dence that could be expected, why
 ' apply only to Madame Tewis, who
 ' was their first landlady at Aix La-Cha-
 ' pelle, and whose house they left as early
 ' as

‘ as the 5th January 1748, when they had
‘ Madame Scholle and Madame Gilles-
‘ fene, with the last of whom, particu-
‘ larly, they lodged until the 21st May
‘ 1748, that they set out for Paris, and
‘ to whom, therefore, the symptoms of
‘ pregnancy, and more particularly the
‘ bulk of Lady Jane, must have been more
‘ apparent than they possibly could have
‘ been to Madame Tewis.

‘ Put, then, all these circumstances in
‘ the conduct of the parties together, and
‘ what can we think, but that the story
‘ is not true? But yet, what I have hi-
‘ therto said, by itself, is not sufficient to
‘ prove the reasons of reduction, for still
‘ the defendant may allege, That it is
‘ possible, that he might have been born
‘ in the house of a Madame La-Brune
‘ upon the 10th July 1748. No doubt
‘ it

‘ it is still possible, but then the suppo-
 ‘ sition of the defendant is unsupported
 ‘ by any evidence whatever, and is also
 ‘ fully contradicted and redargued by the
 ‘ plaintiffs. However, we shall proceed
 ‘ to examine this matter more accurately ;
 ‘ and in the first place, consider the proof
 ‘ brought as to the *house*. And upon
 ‘ this point, I am clear, That the defen-
 ‘ dant has not only failed in proving the
 ‘ existence of the Madame La-Brune, in
 ‘ whose house the delivery is said to have
 ‘ happened, but that the plaintiffs have
 ‘ brought sufficient evidence of the absolute
 ‘ non-existence of such a person. There
 ‘ is indeed one of that name discovered,
 ‘ who was a *Garde Malade*, or sick nurse,
 ‘ but does this person in the least answer
 ‘ the precise and pointed description
 ‘ given of their Madame La-Brune, both
 ‘ by

‘ by Sir John Stewart and Mrs. Hewit ?
 ‘ not to say that it is highly incredible,
 ‘ That a Lady of Lady Jane’s high
 ‘ rank should, after having come to Paris
 ‘ to be delivered, take up her residence in
 ‘ so wretched an apartment as those of
 ‘ the Garde’s Malade, when it is in
 ‘ proof they had money enough to hire
 ‘ more respectable lodgings. But, be-
 ‘ sides all, there is another sufficient rea-
 ‘ son to prevent the application of this
 ‘ La Brune, who was the Garde Malade,
 ‘ to the present question, and that is,
 ‘ that this woman herself was only a
 ‘ lodger, in the house of one Madame
 ‘ *Travers*. Sir John has said, That the
 ‘ Madame La Brune, in whose house the
 ‘ delivery happened, was recommended
 ‘ to him by Monf. Godofroi, whereas
 ‘ Godofroi absolutely denies that he ever
 ‘ gave such a recommendation. Sir John
 5 ‘ has

' has also said, That she was recom-
 ' mended to them by La-Marre ; but this
 ' is incredible, because it is acknowledged
 ' by Sir John himself, That he never
 ' saw Pier La-Marre at the house of Ma-
 ' dame La Brune till the *day* of the de-
 ' livery.

' I come now to another material par-
 ' ticular in this cause, and that is, the
 ' very suspicious appearance of Sir John
 ' Stewart and Lady Jane at the time of
 ' their going to the Hotel D'Anjou kept
 ' by Madame Michelle. When they
 ' come there, which, according to Mrs.
 ' Hewit's first account, was upon the 9th
 ' day after the delivery in LaBrune's,
 ' they appear there without either nurse
 ' or child ; and what follows ? they are
 ' to go next day to the country to bring
 ' in their child ; accordingly they do go
 ' to

' to the country, and return again with
 ' a child and a nurse, the child almost
 ' starved to death for want of milk, and
 ' the nurse a poor wretched thief, who
 ' appears to have been suddenly picked
 ' up upon the streets of Paris, upon some
 ' emergency when hurry and con-
 ' fusion would not allow them time to
 ' get a better one. In short, I would try
 ' to find one unsuspicious circumstance,
 ' but cannot. The time of the delivery
 ' is fixed for the 10th July. Here, the
 ' letters wrote by Sir John and Mrs. He-
 ' wit, and dated the 10th and 11th of
 ' July, without making any mention of
 ' the delivery at all, fall properly to be
 ' considered. And whatever may be the
 ' effect of the defendant's arguments as
 ' to the rest of them, yet it stands ac-
 ' knowledged, That there was one of
 P ' those

‘ those actually wrote upon the tenth.
‘ And if we can fix one to be of that
‘ date, how is it possible to imagine,
‘ That this should have taken no notice
‘ of the delivery, or at least of the ap-
‘ proaching delivery, when by Mrs.
‘ Hewit’s account, Lady Jane had been
‘ ill the whole night before the delivery ?
‘ When to this circumstance of the let-
‘ ters, we add the different accounts
‘ given by Mrs. Hewit about the *time*
‘ between the delivery and their removal
‘ from La-Brune’s ; when we see her con-
‘ tradicting herself upon this particular ;
‘ when we find her swearing solemnly
‘ repeated times, That it was upon the
‘ ninth day after the delivery, that they
‘ removed from La-Brune’s ; and after-
‘ wards in her letter to Mr. Harper, the
‘ minister, correcting this, and fixing the
‘ sixth

‘ sixth day after the birth, as the time of
 ‘ removal from La Brune’s to Michell’s,
 ‘ can we think all this conduct consistent
 ‘ with the truth ? But still says, the de-
 ‘ fendant, in spite of the evidence now
 ‘ produced, the delivery may be true as
 ‘ it is set forth to have happened ; as
 ‘ there is no piece of evidence which di-
 ‘ rectly excludes the possibility of its
 ‘ having so happened. But in my opinion
 ‘ there is such evidence produced by the
 ‘ plaintiffs ; and what I mean is Godo-
 ‘ froi’s books, confirmed by the united tes-
 ‘ timony of him and his wife. The books
 ‘ themselves, in my opinion, remain liable
 ‘ to no solid objection, and deserving the
 ‘ greatest credit. But when to this we add
 ‘ their oaths, in which there appears
 ‘ no suspicion of perjury, and in which
 ‘ they set forth so strong a cause of re-

‘membrance as Monf. Mailefer’s letter,
 ‘recommending them to their house, can
 ‘we poffibly believe that all this is a
 ‘mistake? If we do fo, it is fupposing
 ‘every thing on one fide, againft clear
 ‘and convincing evidence brought upon
 ‘the other fide. I told you before, that
 ‘I referved the evidence as to the exift-
 ‘ence of the Pier La Marre, to be talked
 ‘of afterwards. I will notice that now,
 ‘and I muft fay, That it was the evi-
 ‘dence brought by the defendant, that
 ‘has fatisfied me to be of opinion, That
 ‘the ftory of Pier La Marre’s being the
 ‘accoucheur is a mere fiction. For what
 ‘is the defign of the defendant’s evidence
 ‘upon this head? is it not to redargue
 ‘that of Sir John Stewart, which is juft
 ‘in fo many words telling your lordships,
 ‘That you are not to believe his accounts
 ‘ of

‘ of La Marre, but that the defendant
 ‘ has now found out another La Marre,
 ‘ As to the oath of Menager, wherein
 ‘ he relates a conversation with La Marre,
 ‘ of his (La Marre’s) having delivered a
 ‘ foreign lady of twins, whatever truth
 ‘ be in it, it cannot suit with the account
 ‘ of Lady Jane Douglas’s delivery. In
 ‘ point of time, it is clearly long prior
 ‘ to her delivery, and is fixed to have
 ‘ been in the 1747. This circumstance
 ‘ appears so convincing upon this point,
 ‘ That there is no need to bring out any
 ‘ other circumstances, of which there
 ‘ are many. Having now run through
 ‘ most of the capital points in this great
 ‘ cause, I shall speak a little of the en-
 ‘ levement of Mignon and Sanry’s chil-
 ‘ dren. The first of these certainly hap-
 ‘ pened very oddly, at the very time
 ‘ when

‘ when Sir John and Lady Jane are able
 ‘ to give no account of themselves, and
 ‘ when they appeared at the house of
 ‘ Michelle, under such suspicious circum-
 ‘ stances as I have formerly noticed.
 ‘ The whole story told by Sir John
 ‘ Stewart and Mrs. Hewit, about the
 ‘ manner of their going out to bring
 ‘ their first child to Michell’s, is incon-
 ‘ sistent, contradictory, and suspicious
 ‘ throughout. Will they only give a
 ‘ reason why they did not go to Monf.
 ‘ Godofroi’s upon their return to Paris
 ‘ in the 1749, in order to bring away
 ‘ their second child ; or can they so much
 ‘ as tell us where they were in Paris dur-
 ‘ ing the time they were searching after
 ‘ their second child ? No—They cannot
 ‘ tell where they lodged, it was some-
 ‘ where or other in Paris, but of that
 ‘ place,

' place, or street, or house, they can give
 ' no sort of description. At this very
 ' critical period, was the child of Sanry
 ' stole from its parents, under a false
 ' pretence. And the foreigners, who so
 ' took the child, told its parents they
 ' would hear of them at the inn called
 ' Croix de Fer. I do not say, that
 ' the plaintiffs have brought the fact
 ' of the Enlevementes directly home to
 ' Sir John and Lady Jane; I only say,
 ' that alongst with such a concatenation
 ' of other circumstances they have con-
 ' siderable weight upon my mind.

' These are the material things upon
 ' which I ground my opinion, and I shall
 ' now conclude with a few general ob-
 ' servations upon this cause, 1st. I think
 ' the conduct of both parties in their
 ' ma-

' management of the cause has been
 ' blameless. As to the cry about the
 ' plaintiffs changing their ground, and
 ' resorting to the evidence of Monf. Go-
 ' dosroi's books, after they had founded
 ' on Michelle's, I think it nothing to the
 ' purpose. 2dly, I have given all the
 ' weight to the tractatus parentum, plead-
 ' ed for by the defendant, which I think
 ' it deserves. 3dly, Though I do not
 ' chuse to enter upon the motives that
 ' might induce Lady Jane and Sir John
 ' to commit this crime, yet I cannot but
 ' observe, That their professed view seems
 ' to have been, by means of false children,
 ' to get possession of the estate of Dou-
 ' glas ; a great part of which, it is clear,
 ' Lady Jane thought would at any rate
 ' descend to her and her children. 4thly.
 ' As to the death-bed declarations, upon
 ' which

' which so much weight has been laid
 ' by this defendant, I am old enough to
 ' have seen, That where persons have
 ' once committed desperate crimes, they
 ' too often carry them on even to death :
 ' perhaps hoping for that mercy from
 ' their Maker, which the enormity of
 ' their crimes would not allow them to
 ' receive here. 5thly, As to the preg-
 ' nancy, I do not think the proof brought
 ' in support of this, by the defendant,
 ' sufficient to ballance the whole of the
 ' other proofs brought by the plaintiffs."

Upon the whole, his lordship was clear
 for sustaining the reasons of reduction.

Immediately after the Lord President
 had finished his speech, it was agreed by
 their lordships, That they should deliver

Q

their

their opinions according to seniority,
and therefore Lord Strichen, the senior
judge, being called upon to give his opi-
nion, delivered himself as follows.

'The proof of the pregnancy strikes
'me so strongly in this cause, that I own
'I cannot get over it. And more parti-
'cularly, I lay a great deal of weight
'upon the Earl of Crawford's letter to
'the Duke of Douglas upon this subject.
'I cannot but think that pregnancy may
'be proved, so as to infer an absolute
'certainty of the fact. We know the
'seasons of the weather by general ob-
'servation, and why may not the ad-
'vancement of pregnancy be ascertained
'by similar observation. I see it proved
'beyond controversy, That Lady Jane
'gradually encreased in her size: Isabel

'Walker

' Walker depones to this so explicitly,
 ' and I believe with so much honesty,
 ' That I own it is a thing I cannot get
 ' over. If then pregnant, it is clear,
 ' that she must have been delivered, or
 ' else have had either a miscarriage or
 ' an abortion, which, if so, it was un-
 ' doubtedly incumbent on the plaintiffs
 ' to prove it, as the pregnancy once fully
 ' ascertained, lays the presumption for
 ' a full birth. This being the case, I
 ' cannot think that the defendant is
 ' bound to prove his own birth:" This
 must rest upon the acknowledgment of
 his parents, and upon their uniform *tra-*
status or treatment of him as their son.
 It is incumbent upon the *plaintiffs* to dis-
 prove the birth by clear and positive evi-
 dence: and none such, in my opinion,
 have they been able to bring. On the

contrary, the defendant, besides the direct and positive testimony of one witness, has brought an incredible weight of circumstances corroborative of the truth of his birth. If to this we add, that the whole story of imposture as set forth by the plaintiffs is highly improbable, we shall soon find the balance incline to the defendant. Let us examine this story of the plaintiffs, and see if they have probability on the side of their hypothesis. Was it credible, that when Lady Jane and Sir John were so *poor*, that it is proved they could scarcely maintain themselves, they should burden themselves with the danger of so much guilt; and the more poverty, provide for the children of other people? Was it credible, that when *one* child might have served the purpose, they would have burdened themselves with *two*? or that
they

they should have taken a weakly tender child to support a stronger one? Is it to be believed, that after they had got the imposture of the first child accomplished, they would have remained so long in and about Paris, appearing in public, and exposed to the view of every person that might be in search of them? or upon leaving Paris, is it credible, That they would have gone to Reims, and remained there for the space of fifteen months? It was surely much more natural for them to have left France altogether, after having committed so great a crime. But not only do they remain quietly and peaceably so long at Reims, but they even go back to Paris a second time, to pick up a second child; which second child, when they did find, corresponded exactly to the accounts which they had given of him, fifteen months before they

they saw him, or knew anything about him. Such is the story as set forth by the plaintiffs ; improbable it is, surely, to the last degree.

On the other hand, the conduct of Sir John Stewart and Lady Jane Douglas is very consistent with the notion of a true birth. Much has been said about the false accounts given by Sir John Stewart, concerning the particulars of this birth, and the inference drawn from Sir John Stewart's account of the matter, is, that the defendant is not his son. But I humbly apprehend, That had Sir John, at the time of his declaration, even acknowledged that the defendant was not his son, that this would not have been sufficient to have set him aside, after he had attained the possession of his state, in consequence of his own acknowledgment

ment of him as his son. Upon this point, I refer to the great Lord Stair, who expresses himself in the following words, "Filiation is presumed from marriage, whereby the children are presumed to be the lawful children of those who are proved to have been married; which is yet more pregnant and favourable on the part of the children, to give them the right of aliment and succession, and is the probation of the marriage betwixt those who are presumed parents, which is so strong a presumption*, That the mother acknowledging another father, than he that is married to her, will not prejudice the children, much less will the assertion of the father, that the children are not his, though he condescend

* Lord Stair's Institutions of the laws of Scotland, Book 4. Tit. 45.

‘ upon another to be the true father :
 ‘ Yet, if both the married persons do
 ‘ acknowledge, That the child is not pro-
 ‘ create betwixt them, but by another as
 ‘ father, who should also acknowledge
 ‘ the same and own the child, it would
 ‘ elude the presumption ; but if both
 ‘ married persons had owned and treated
 ‘ the child as theirs, the concurring testi-
 ‘ monies of all *the three*, would not pre-
 ‘ judice the child in the rights of suc-
 ‘ cession to his reputed father and mo-
 ‘ ther.’

The conclusion which we draw from
 any falsehoods and contradictions, which
 may appear in Sir John’s account of the
 matter, is, that the defendant is not his
 son ; but we see, upon the above great au-
 thority in law, That had Sir John and
 Lady Jane both owned that he was not
 their

their son, after having treated him uniformly as such for any length of time. He must, nevertheless, have been maintained in the possession of his state. This being the case, I shall make a few observations upon the other parts of the proof brought by the plaintiffs, no part of which, excepting that by Monf. Godfrois's books, and his oath, is totally inconsistent with the truth of the birth, or exclude the possibility of it. It is merely of the negative kind, which can seldom redargue direct positive testimony. I apply this observation, particularly to the proof attempted to be brought of the non-existence of a La-Marre and a La-Brune, against which negative proof, we have the direct and positive testimony of Sir John Stewart and Mrs. Hewit, That La Brune's house was the *place* of

R

the

the delivery, she herself one of the witnesses to it, and La Marre the *accoucheur*. The defendant has shown clearly there was a La Marre, an accoucheur in Paris at the time, and that he delivered a foreign lady of advanced age of twins, who (as La Marre said) would be people of great wealth and rank in their own country; and that the one of them was strong and healthy, the other weak and sickly. Taking, then, all these things together, it is not only possible, but highly probable, that the whole account given by Sir John Stewart and Lady Jane Douglas is true. The plaintiffs lay great stress upon Godofroi's books, together with the oath of him and his wife, and assert, That they have thereby proved the alibi from the fourth to the fourteenth July. I must here observe, that we ought to have had the books themselves

selves produced by the plaintiffs, and that the producing a notorial copy of them is not enough. But, however, let us look into the entries made in these books, we shall see so many blanks, so much indistinctness and inaccuracy, that without believing implicitly in Monf. Godofroi's memory, we cannot pay regard to them. They have sworn indeed, positively, That the blank article of the 4th of July, does relate to Sir John Stewart and his company. But in this it appears to me, they are very probably both mistaken. But however that be, the proof by their oaths singly suppletory of their books, which I see are liable to so much error, will not be sufficient to set aside the whole evidence direct and circumstantiate, which the defendant has brought in support of his birth.

Much stress has been laid upon an alleged detection of falsehood on the part of Sir John Stewart and Mrs. Hewit, in saying, that they were in want of money at Paris. It is true, that it is in proof, That Sir John Stewart had letters of credit for a pretty considerable sum, but how do we know that Sir John had this money free in his pocket after he received it ; very probably he had not, as he was a thoughtless dissipated man ; and therefore, the inference drawn from this letter of credit upon Paris is too strong. That they were in want of money when in Paris, is positively sworn to by both Sir John and Mrs. Hewit. That it *may* have been so, I can easily believe. It will account for very many things in their conduct, which may now appear surprising to us.

As

As to the two Enlevements, neither of them applies to Sir John Stewart; it is conjecture merely. Upon the whole, I am clearly for affoilizing the defendant.

Wednesday, July 8, 1767.

Lord K A I M S spoke as follows.

I Shall give your Lordships the reasons of my opinion in this Cause as shortly as possible.

The first light in which I view this matter is, Whether, if Mr. *Douglas*, (whom in this argument I call by that name to distinguish the person) *were now* requiring to be served heir to the Duke of Douglas, we would serve him heir? If this was the state of the question now, I own I should be much diffculted; as I was exceedingly struck with the circumstances that were mentioned

tioned yesterday with so much weight from the chair. But the fact is, That Mr. Douglas is already served heir by a verdict of the jury ; and therefore the question is, if the proofs brought by the plaintiffs be sufficient to void that verdict, and to turn him out of the possession of his state, in which he is now so firmly settled? In my opinion, the proof brought by the plaintiffs is not sufficient for this purpose, though perhaps it might have been sufficient to prevent his being served heir at first.

There is one thing which runs through all the proofs in this cause, and to notice which is very material ; that is, a certain confusion naturally arising from enquiring into such a number of facts that have happened at such a distance of time.

time. And therefore we shall be very apt to err if we draw strong consequences from facts, which, for the reason I have given, cannot be compleatly ascertained. I will give some instances of this. There is evidence brought, That Lady Jane and Sir John Stewart brought their French servant to the borders of France only, and that they there dropt him. This, when it was first alledged, might be considered as a very strong circumstance to prove a fraud. Whereas now it comes out clearly, that that servant was a French deserter, and so dared not enter the kingdom of France. In this case therefore we should have been mistaken, if we had drawn the consequence which the fact, as at first set forth, seemed well to bear. I will mention another thing which strikes me

in the same view. I mean that of Lady Jane's loitering so long upon the road when drawing so near to the time of her delivery. Upon the supposition of a true birth, she must have had her reasons for doing so, which perhaps now cannot appear to us, for the reason which I have mentioned before. On the other hand, if we suppose an imposture intended, it is clear, that the sooner they accomplished it the better. And her loitering so long upon the road, when she pretended to be so big with child, could have no other tendency than to blow up the whole scheme they had laid. It is proved, that they left their maid servants at Reims, and yet it is said that these maid servants were accomplices. But taking it, That they were not accomplices, why not entrust the affair to them, particularly to Isa-

S

bel

bel Walker, when since it appears that (upon the supposition of an imposture I mean) she has actually perjured herself, and endangered her soul for the sake of the defendant. So standing the affair, I want something whereby I can explain the conduct of the parties consistently with a real birth, and avoid what appears to me a danger of drawing strong consequences from facts which cannot be clearly settled. The proof which the defendant has brought of Lady Jane's pregnancy, is just what I wanted. For if one holds this proof to be true, all the difficulties must vanish. Of the pregnancy, I think, there is the most compleat evidence that can be produced. I have always thought, from the beginning of this cause, that the stress of it would lie here : and therefore, to do away the

the

the proof of the pregnancy, I expected that the plaintiffs would have brought a proof of a miscarriage by Lady Jane. But we are not now in so strait a case: the service has ascertained the state of the defendant, in which he must be continued; and that service held *pro veritate*, except the plaintiffs could have brought direct and positive evidence of the contrary. What always touched me the most in this cause, was the forged letters. Yet I own I cannot give this circumstance so much weight as to conclude from it, that the whole is absolutely false. I am far from thinking that the evidence of Sir John Stewart was not good against his son; but then I can explain the whole of that evidence so as to make it not absolutely subversive of the truth of the birth. The forgery of

the letters was no doubt an unjustifiable circumstance in the conduct of Sir John, but then I see that these letters were meant as an interim proof to the Duke of Douglas only ; for it is clear to me, that there was a La Marre, and that Sir John did, at some time or other, correspond with him. The forgery of the letters then was a circumstance of conduct highly blameable in Sir John Stewart, though I do not think it was much unlike the Tournelle process, which to me seems to have been intended by the plaintiffs to stab the defendant behind his back. To me nothing can appear in a more odious light than this Tournelle process does, though I do not say that the gentleman who conducted it had any fraudulent intention in so doing. The plain-

plaintiffs managers seem from the very beginning to have been convinced of the imposture, and therefore it would appear that they thought every thing lawful that would lead to a detection.

Lord AUCHINLECK gave
his Opinion for the Defendant,
to the following Purpose.

I Have considered the cause with all
the attention in my power, and am
not at all surpris'd that your lordships
should differ in opinion about it, when
I consider the immensity of the proofs,
and the long laboured argument upon
these proofs.

In considering this cause I endeavour-
ed to take care not to be as it were
drawn off at the tangent, and was al-
ways willing to listen to any further evi-
dence that could be got. I was there-
fore very glad to have Isabel Walker ex-
amined

amined again. To the questions which I thought material, this witness answered pointedly and distinctly; and though she underwent an examination of two days from the plaintiffs, with the special view, as appeared, of making her contradict her former evidence, yet, except in one trifling instance, she kept her temper throughout the whole, and had to me so strong an appearance of integrity, that I do believe that every thing she has sworn is agreeable to truth. Before I enter into the cause, I must premise a few general observations. In all questions about filiation, sceptical people may have opportunities of raising abundance of doubts; as it is possible that wives may be unfaithful, nurses false to their charge, and that they may both conspire to bring in false children.

Yet,

Yet, though such things may happen in almost every possible case, yet the law will determine such questions upon general principles, requiring a legal certainty in filiation, not certainty in the abstract. Of this daily instances occur in this court. And in the case of alledged bastardy particularly, the law will take its course, and hold the child to be lawful, except there be absolute impossibility of its being the child of the husband. Indeed, if we had not these rules, every thing would run into absolute confusion. I would observe further, that if a person is acknowledged by a married couple to be their child, this is legal evidence of it; and such a train of acknowledgment must be held to be a *probatio probata* or *pro veritate*, till the contrary be proved by clear and undoubted evidence. The

longer it is before the challenge of such a person's birth is brought, the harder it is to get the better of this legal presumption. If the case of Douglas had been like that of *Kinnaird*, the argument from the parents acknowledgement would not have applied; but here there is a long course of acknowledgement for the space of many years together, with the warmest affection on the part of Lady Jane; and what was very remarkable, though in very great poverty, neither Sir John nor her were ever heard to grudge their giving these children a share of the very little they had. The Defendant must be a stranger to the circumstances of his birth, and so cannot be answerable for the conduct of his managers. It is not in this case as upon a criminal indictment, where the guilt

T

of

of the prisoner may often appear from his behaviour, from his looks, and from the shape of his defences.

These are the general principles, which applied to this case, will, in my opinion, direct the decision of it. However, I must observe farther, that I could have wished that we could have had a more full, clear and satisfying evidence than we have : and farther, that this process had taken rise at a time when there were no bye motives to bring it, instead of its being brought immediately after the defendant had defeated Duke Hamilton in point of law. I own that I cannot get out of my view the method in which this process was raised and conducted. This is material, because it will account for many singularities occurring in

in this cause. Instead of applying for an act and commission from this court to bring a proof of the imposture, the plaintiffs were pleased to bring their criminal action before the parliament of Paris, and procured a monitoire important, which treats Sir John Stewart and Mrs. Hewit as already convicted of the supposition of children. And under the word *Quidam*, makes the thing as plain as if they had put in the initials of their names. I did not condemn this process before the Tournelle because it was unfashionable, but because it was unjust and oppressive to the last degree; and I think I can give pointed evidence, that this my opinion was well founded. I shall give two or three instances which will sufficiently explain what I mean. In a conversation betwixt Miss Louisa

Hybert at Reims, and Mr. Andrew Stewart, it appears, that at first the Lady told him that she observed the pregnancy; whereas, after the Tournelle process, and the publication of the monitoire, she retracted this notion, and swore the direct contrary. Another instance of this appears from the conduct of Francoise La Marre, brother to the famous Pier La Marre. Mr. D'Anjou, procureur for the plaintiffs in Paris, in his private memorial says, that Francoise La Marre told him, that his brother Pier La Marre was intimate with a Madame La Bruhe, and that he had taught her midwifery. From a second note or jotting of Mr. D'Anjou's it appears, that the other party had been with Francoise La Marre, and that he told them every thing but the information of his brother's acquaintance

tance

tance with La Brune. But after all, when this Mr. Françoise La Marre is sworn upon our act and commission, he says he knew nothing at all about his brother's acquaintance with La Brune. Madame Michelle is another instance of the miserable bad effects of this Tournelle process. Upon her being first discovered she said, That when Madame Stewart-Douglas came to her house, she had all the appearance of a woman recently delivered. In short, if I could believe the witnesses adduced after the Tournelle process, and the proceedings upon it, I would fairly acknowledge that the pregnancy is disproved by these witnesses. Madam Sautry, the mantua-maker at Reims, makes strong endeavours to disprove the pregnancy; she even *measures* Lady Jane to make
sure

sure work of it. When we look into the plainte to the parliament of Paris, they appear to be satisfied that Lady Jane had every appearance of pregnancy; but after the monitoire appeared, the memories of the witnesses underwent a great alteration. Some of them being very much weakened in this particular, when others were as much improved.

Having thus taken a general view of the proof brought by the plaintiffs in this cause, I have only to add, that I pay no great credit either to the books of Police, or to those of the Hotels in Paris. The plaintiffs at first set forth, that these books were infallibly sure, and liable to no errors or mistakes; whereas to me it really appears to be a

battle

battle of books betwixt the respective hotels.

Such is the evidence upon which we are to determine this great cause, excepting somewhat as to the conduct of parties. The proof against the defendant may be reduced to two general heads. 1st, Things exclusive of the truth of the birth, such as Lady Jane's age, letters of false dates, the enlevements, non-existence of La Marre and La Brune, &c. And 2dly, The alibi in Monf. Godofroi's upon the 10th July. The plaintiffs have now given up the point of the age, though it was upon that alone that the suspicions first rose; but they say that she had only the appearance of pregnancy. Well, take it so; it is clearly proved that she had such

an

an appearance; and from all the circumstances I am fully convinced it was a real pregnancy. If no appearance of pregnancy had appeared at all, then the cause must have gone clearly against the defendant. None of the other circumstances which are brought by the plaintiffs are, as I think, proved, except that of the forgery of the letters, which always stuck strongest with me. Here comes in a question, What shall be the consequence to this defendant, if his father did not act the proper part? The people upon the other side have at times not acted properly neither; for instance, the Tournelle process and all the consequences of it. In the conduct of which cause there is something that does not a little resemble La Marre's letters. Of this I shall give the following strong and
preg-

pregnant instance. At first the plaintiffs thought proper to place the scene of the *alibi* in the house of Michelle upon the *eighth day of July*, and this they did upon the authority of Michelle's books, and alledged that the article of Monsieur *Fluratt and his family* wrote in that book upon that day, was of the hand-writing of *Sir John Stewart himself*. This being the case, the plaintiffs thought proper immediately to get this book of Michelle's lockt up in the Tournelle, in order, it seems, that the defendant might never see it. Instead of producing the book itself, the plaintiffs have brought a long oath concerning this book, and more particularly concerning this article the date and hand-writing of the entry concerning *Monf, Fluratt and his family*. This gentleman, who depones in a

U

most

most pointed manner upon his bare memory as to the dates and hand-writing of the articles of this book, is one *Maitre Duresseau*, a man who has a great many sounding titles, *Conseiller du Roi*, and I know not all what. He depones, That so far as he can remember, the article which goes before that of *Monf. Fluratt* is of a date *anterior* to that of the 8th July; and that he remembers to have asked of *Michelle* of whose hand-writing was the article of *Monf. Fluratt*: And that *Michelle* answered the deponent, * That this article was neither of his hand-writing nor that of his wife's; and that he presumed it was of the hand-writing of the person who called himself *Fluratt*. However, the plaintiffs having changed their ground as to the alibi,

* Vide pursuers proof, page 887.

and

and transferred it to Monf. Godofroi's; then Michelle's book itself is produced, though it seems it could not be got before; when, instead of the dates and hand-writing being as represented by this officer of the police, it appears clearly that they are both essentially different. What then can be said to be the design of all this? No other surely than to impose upon your lordships by representing the *alibi* to have been at Michelle's. This was at least a wrong step, as much so perhaps as the fabricating of the four letters, which may be compared to the *piæ fraudes* which were frequent of old, and which happened although the people that used them were in the main supporting a thing that was right. Yet I do not vindicate Sir John for this step, but I cannot carry the thing so far as to make

it overbalance the weight of unsuspicious evidence which the defendant has produced.

I come now to touch shortly upon the proof of the alibi at Mons. Godofroi's. In instructing of which I think the plaintiffs have totally failed, and I must continue to think so, except I can believe that he and his wife have memories superior to *Joseph Scaliger's*. They have indeed most unaccountable memories, according to their own account of the matter; for they even remember what coat Sir John had on in the year 1748. I am however unwilling to believe them to be perjured, but I believe that they had their memories refreshed by the monitoire, as many others seemed to have had theirs weakened by it. They have been misled by their books, which

which they think all very accurate, tho' it is proved to demonstration they are liable to many errors and mistakes. And because they had marked Sir John Stewart's name in the *Livre D'Inspection*, therefore they take up an apprehension that the *blank* article of the 4th of July, in their *Livre D'pence*, relates to him and Lady Jane and Mrs. Hewit.

Upon the whole, my opinion is, that as the defendant is now in complete possession of his estate, and as the evidence against him is neither unsuspicious nor conclusive, that therefore he falls to be affoizied.

~~Lord COALSTON gave his~~
Lord COALSTON gave his
sentiments in the following
manner.

IN delivering my opinion in this cause, I will not run over the whole of the arguments stated upon either side, but will endeavour to take one close connected view of the whole. The question now before us, falls to be determined upon principles of law, of importance not only to this country, but to all mankind; and of these principles the first is, that there is no *direct* proof necessary to establish filiation. Accidents innumerable and unavoidable may prevent a *claimant* from bringing direct evidence of his birth, more especially if the same has happened when his parents were

travelling abroad in a foreign country. Yea, I will adventure to say, That of all the numerous audience now present, there is not, perhaps, one in a hundred able to bring compleat legal evidence of the precise time and place, and other circumstances attending it. For this good reason, therefore, it is, That the law has required no other proof of a person's birth, but the acknowledgment of the parents, and the *habite and repute* consequent upon that acknowledgment. I do not mean to say, that such may not be defeated by a contrary proof; I only say, That it is legal evidence, as much as if the direct birth had been proved by *witnesses*; and that, until it shall be redargued by a clear and positive proof of the contrary. So standing the law as I apprehend, the defendant is entitled to

found

found upon the acknowledgment of his parents, and the habite and repute following thereon as *probatio probata*. The consequence of which is, That the *onus probandi* must fall wholly upon the plaintiffs in this cause. I am also equally clear, that before the plaintiffs can prevail here, they must bring such evidence to your lordships, as would have been sufficient to have *convicted* Sir John, Lady Jane and Mrs. Hewit of the capital crime of *suppositio partus*; and if such strong proofs are necessary only to balance the legal presumption for the birth of the defendant, much stronger must these proofs be, where there is both a direct and a circumstantiate proof of the birth, as is the case here. I shall consider first the proof so brought by this defendant, and then the proofs brought by the

the

the plaintiffs, upon which they would have us to set his proof aside. The defendant's proof naturally divides itself into two principal parts, the proof of Lady Jane's pregnancy, and the proof of the delivery. And first, as to the pregnancy, in spite of all the plaintiffs have advanced as to the uncertainty and fallibility of such proof of pregnancy, I must, according to all the lawyers opinions I have ever read upon this subject, hold pregnancy to be a thing *capable* of a *certain* proof: And whatever a sceptical physician may have given as his opinion in this cause, as to the uncertainty of the proof of pregnancy, yet I regard not his opinion either, for the reason which I have now given.

This being the case, I go on to enquire whether or not the pregnancy of Lady

X

Jane

Jane Douglas is proved: And that it is proved, I am clear, from the oaths of Mrs. Hewit and Isabel Walker, and from the declarations of the other maid Effy Caw, who died before she could be put upon oath in this cause. And all their evidence stands so strongly supported by the oath of Mrs. Hepburn of Keith, and so pointedly confirmed by a number of other respectable persons who had the most intimate acquaintance with, and most frequent opportunities of seeing Lady Jane at that time; that I can have no doubt of the matter. Against this negative evidence brought by the plaintiffs can never be held sufficient. And indeed, it does appear, that the plaintiffs themselves were convinced of the pregnancy: not only from their first plainte to the parliament of Paris, but also from

the

the testimony of Sir William Stewart in this cause; who deposes, That in a conversation which Mr. Andrew Stewart had with the honourable Mr. Murray at Paris, he (Mr. Andrew Stewart) owned to Mr. Murray, "That he had all the "proofs in the world of Lady Jane's "pregnancy, but none of her delivery."

I come now to consider the proof of the delivery itself. This, indeed, rests upon the testimony of Sir John and Mrs. Hewit, who were the only witnesses that can be found to the act of delivery. But then it falls to be noticed, that their direct and positive harmony to the fact is confirmed by a train of such circumstances, and these circumstances fall in so exactly with the account given by Sir John and Mrs. Hewit, that they afford

conviction to my mind, as strong as if
 so many more witnesses had sworn directly
 to the fact. The circumstances which
 I mean, are contained in the oaths of
 Doctor *Menager*, and Madame *Garnier*,
 the nurse of the *second* child. It would
 have been, indeed, next to a miracle, if
 Sir John Stewart, in order to accomplish
 this alledged imposture, should have pitch-
 ed upon a *Pier La Marre*, to be the
 fictitious accoucheur, who, as he himself
 told to Doctor *Menager*, had about that
 time delivered a foreign lady of high
 rank, and of an advanced age, of twins,
 the youngest of whom was intrusted to
 his (*La Marre's*) care to be nursed. But
 this is not all; you have Madame *Garnier*
 herself swearing expressly, That she
 nursed a child given to her by Mr. *P. La*
Marre, and that he told her to take ex-
 ceeding

ceeding great care of the child, because it was belonging to foreigners, people of distinction; and might be a rich man in his own country. If, to all this, we add, the accidental manner in which both Doctor Menager and Madame Garnier the nurse were discovered, it must establish the credibility of their testimony beyond doubt. And I am really convinced, That if *Giles* and *Françoise La Marre*, had spoke out the truth, the evidence upon these articles which I have narrated, would not have been liable even to the shadow of an objection. But even, supposing that there had been less proof of the *act of delivery*, either by witnesses or by circumstances, it falls to be noticed, That the two proofs of pregnancy and delivery mutually assist each other, and establish the one great point sought

after,

after, viz. that there was really a delivery. Yea, had there been no proof at all brought of the act of delivery, and which may have been the case often, as the act of delivery is often transient and even in a moment; yet, as she is clearly proved to have been pregnant when she went to Paris, the law would have presumed, That she was there delivered according to the account she herself gives us. As the proof of the circumstances before, so the proof of what happened after the delivery convinces me, that there is no falsehood in this case. We have Lady Jane displaying upon every occasion the strongest maternal affection for these children. You have the depositions of I believe a hundred of witnesses, that the second boy Sholto was the very picture of Lady Jane. A circumstance

circumstance which has its weight with me, considering the sense and character of the people who affirm it, and as I see that every lawyer who has wrote upon such questions as this, treats of the *similitude of features* as being a presumption to establish a real birth.

The plaintiffs have, in order to support their plea, found it necessary to discredit the testimony of the witnesses who had deposed to the pregnancy; and more particularly they have attacked with all their force the credibility of Mrs. Hewit and Habel Walker, two persons who it is in proof had always maintained characters free of the least exception. Both these witnesses were examined in your lordships presence, Mrs. Hewit several times, and

Mrs. Walker once; and in my opinion delivered their testimonies with such constancy and firmness as nothing but truth could inspire, and which led me firmly to believe all that they respectively swore. There are indeed in their accounts of the matter a few trifling contradictions and variations in some of the most minute matters of their detail; which, instead of being either wonderful or suspicious, is a circumstance which may naturally be expected to happen after so long an elapse of time, and instead of lessening (in my view) encreases the credit due to their story. I therefore hold the proof which the plaintiffs have brought to be by no means sufficient to discredit the testimony either of the one or the other of these capital witnesses. I have
thus

thus run through the bulk of the proof brought by the defendant, and which it is to be considered he was not obliged to bring, and shall therefore proceed to examine with as much accuracy as I can the proof brought by the plaintiffs. The plaintiffs proof is not pretended to be *direct* or *positive*, it is circumstantiate wholly. I have ever considered it as an uncontravertable principle of law, that wherever there is a proof upon one side by credible *witnesses* (which is the case here) this cannot be shaken by a proof of *circumstances*, when these circumstances are not inconsistent with, nor exclusive of the principal alledgeance established by witnesses. I will give one instance in the proofs which the law admits in the case of theft. This crime is generally proved by a train of circumstances; that the

Y person

person charged with the theft was found with the stolen goods in his possession, that he was habite and repute a thief, or such like circumstances. In order to free himself from the charge attempted to be proved against him by such a train of circumstances, the prisoner at the bar generally alledges that he came by the goods in a lawful manner. And if he shall be able, by the testimony of two unsuspected witnesses, to prove this fact, the whole circumstantiate evidence reared up against him falls to the ground at once; and that for this good reason, that these circumstances, though they be fully proved, are not inconsistent with the alledgeance of the prisoner proved by direct testimony. If then we shall take a view of the various circumstances adduced by the plaintiffs, we shall be convinced that

3

they

they might have all happened consistently with the defendant's hypothesis. For many of the most material of these suspicious circumstances the defendant has been able to account; and though they had not been accounted for, yet they did not apply. As to the declaration of the defendant's father, Sir John, I shall only barely mention, that through the whole of that examination, Sir John shewed not the least consciousness of guilt. As to the four letters from Pierre le Marre, which are alledged to be forged, I must observe in the first place, that I am not satisfied that these letters were really forgeries by Sir John. And 2dly, That though we suppose them to be forged, yet this cannot defeat the direct and circumstantiate evidence brought by the defendant, and which does not rest

upon any after act or deed of his father
Sir John.

As to the *alibi* in Godofrois, I pay no regard to his books; and though these are supplied by his oath, in which it is highly probable to me he is mistaken, yet they are not sufficient to defeat the whole of the evidence on the side of the defendant.

I now draw towards a conclusion, and have only to add a few general observations. The system of the plaintiffs appears to me incredible in all its parts. Lady Jane is clearly proved to have been *capable* to have children, Why not then have children? Is it at all credible that upon their return from Reims to Paris, when they had only picked up one child, that they should have given out to their friends

friends there and elsewhere, that they had *two*. Yea, might not this circumstance, taken by itself, have afforded ground for an almost immediate detection? When come to Reims, they give out that their second child, whom according to the plaintiffs they had not yet picked up, was a sickly, tender infant. But this is not all, for at the distance of sixteen months after this, the child they bring with them from Paris was found exactly to answer the description given of him. Upon the supposition of an imposture, this is all truly miraculous.

Lady Jane Douglas's private letters to Sir John and her other friends upon the subject of her children, are wrote in a style so affectionate and tender, so unconstrained and natural, that they afford
full

full conviction to me of two things: 1st, That they were never intended for public inspection; and 2dly, That they flow from an innocent mind oppressed with misfortunes, though free of guilt. Shall we then, my lords, after so clear a proof on the part of the defendant, upon which he has been in possession of his state to the age of manhood, deprive him of his illustrious birth and princely estate; and, upon a moatly collection of inconclusive circumstances, send him back to be accounted the son of an infamous beggar, who has perjured herself in the face of your lordships? One thing more, and I have done. The proceedings in France, in consequence of the Tournelle process and monitoire, struck me with horror and indignation; and more particularly I was shocked to see a British act
and

and commission garbled by an *arret* of
the French king.

Upon the whole, I am convinced that
this defendant is the son of Lady Jane
Douglas, and therefore that he falls to
be assilzied.

9th July.

Lord B A R J A R G spoke first
this day, as follows :

IN giving my opinion upon this cause,
I do not think it necessary to recapitulate much ; it will be sufficient to trace some of the outlines of the proof, and to draw the consequence from these facts so established. The question before us is a point of fact merely ; that is, Whether or not the defendant is the son of Lady Jane Douglas ? Upon whom the *onus probandi* is to be laid, is a preliminary point, upon which I cannot agree to adopt the arguments on either side, both sides having

ing carried them too far. We can get but few rules of law to apply to such circumstantiate cases; but the following rules seem to me to be well founded in reason and sense: 1st, It is not sufficient for the defendant to say, that as he stands in possession upon a verdict, therefore he is obliged to bring no further evidence; 2dly, Neither are the pursuers to be excused from their proof. It is incumbent upon them to point out what defects there may be in the evidence upon which the verdict proceeded, and to bring what farther evidence of its falshood they can: and upon the whole of that evidence we must pronounce judgment accordingly, taking into our view every fact and circumstance more or less material, as they stand more or less connected with the material object in view; that is, the birth

of the defendant. From the very nature of the evidence, the plaintiffs were led to contravert the pregnancy, because pregnancy is inseparably connected with the delivery, and yet I do not think that the plaintiffs have fully disproved the pregnancy. Indeed the appearances of pregnancy at least, are established without doubt when at Aix and Liege ; but from the time that Lady Jane leaves Liege, that appearance becomes more uncertain, and grows more feeble, as they advance nearer to Paris, the place of their destination. Indeed Lady Jane past quickly through a strange country, which is a circumstance that may account for people's inattention to her ; and as to those who have sworn so pointedly to the pregnancy, they might be deceived with the appearance, and think it real. Perhaps

an actual and real pregnancy cannot be certainly proved; there are many diseases that imitate pregnancy; and when to this I add the risque that Lady Jane run by long journies, rough and bad roads, and bad machines, I am led to conclude, that notwithstanding the appearance of pregnancy, which is proved, yet the defendant is not thereby relieved of bringing probable evidence of his birth.

It is remarkable in going over this proof, that Lady Jane staid no less than nine days at Sedan. We have the evidence of Mrs. Hewit and of Mrs. Glass as to what happened there, and which evidences contradict each other to the last degree, though both of them seem to agree in Lady Jane's being in danger of a miscarriage when there. From that time

on till they arrived at Paris, it is agreed, that Lady Jane had no difficulty in performing her journey, nor any threatnings of her approaching delivery.

The evidence of the birth divides itself into two classes, 1st. That evidence arising from the testimony of Sir John and Mrs. Hewit, and from letters wrote by them and by La Marre. 2dly, The testimonies of Doctor Menager and Madame Garnier. This is the whole of the defendant's evidence of his birth, and with great regret, I must give it as my opinion, That it does not appear to me sufficient for the purpose. If we take one class of his evidence without the other, it is clearly not sufficient; if we join them together, they mutually contradict and destroy each other. The proof of the forgery of the four letters
 from

from Pierre la Marre, does, in my opinion, destroy any credit due to the testimony of Sir John Stewart and Mrs. Hewit as to him. The plaintiffs have endeavoured to prove, that Lady Jane knew of the forgery, and that she relied much upon these four letters to prove the birth. But I own, I do not think they have succeeded in this.

The second branch of the evidence for the birth consists, of the evidence of Doctor Menager and Madame Garnier. I am unwilling to give way to the idea, that any witness is willingly perjured. I believe the accounts that Doctor Menager gives of his conversation with La Marre; I believe that La Marre was for some years in the *Hotel Dieu*; and that he afterwards practised as a surgeon in a very low sphere, and was a good deal

deal employed in secret services. But then it is clear, that this La Marre cannot be the same one, that Sir John Stewart described so particularly. Doctor Menager's friend, La Marre, was not a Walloon, neither could he be a surgeon of a regiment in the year 1721, because he was then but a mere boy. It was very natural for so obscure a man as the La Marre swore to by Doctor Menager, to boast of his great practice, but it would be drawing too strong consequences from the story which he told about the foreign lady, whom he brought to bed of twins, to fix that foreign lady to be Lady Jane Douglas. This is not the only objection to the application of this evidence to the present question, for it appears clearly in proof, that if this *La Marre* did really deliver a foreign lady in the way set forth by Menager, it must have

been

been in the year 1747. For we have it clearly ascertained by the evidence of *Monf. Giles*, That Doctor Menager was attending the army during the whole of the year 1748. I do indeed rest more upon the evidence of *Giles*, than upon that of Menager and Madame Garnier. The consequence of which, is, That Menager's oath applies to an earlier period. The defendant sets forth, that he was born upon the 10th July 1748, in the house of a Madame La Brune. Of this the defendant has produced no sufficient evidence; he must stand upon the evidence I mentioned before; and therefore, all these objections to the evidence of Sir John and Mrs. Hewit strike in properly here. The circumstances, situation and business of the La Brune, in whose house, says the defendant, Lady Jane may have been delivered, are totally different

different from these condescended on by Sir John and Mrs. Hewit, repeated times, as well upon declaration as upon their oaths. From these things, therefore, I must draw the conclusion, That the defendant has brought no evidence to show, that Lady Jane was delivered in the house of a La Brune, and by a Pierre La Marre.

As to the *alibi* in Mons. Godofrois, I think his books are good evidence of this; it is at least moral evidence of it, all that can be expected in such a case, and there lies no probability at all upon the other side.

If Sir John and Lady Jane had been now pleading for themselves against this evidence, they would have had nothing to say, except they could have produced

as strong evidence to show, that they were actually at this time in the house of a Madame La Brune. But when to this evidence by Mons. Godofroi's books, we add the obscurity and concealment, and want of truth in the accounts given of this whole matter by Sir John, Lady Jane and Mrs. Hewit, the evidence is so situated, that upon the side of the defendant's birth, there remains but a bare possibility; whereas, upon the side of the plaintiffs, there is a great weight of probability, and even of moral certainty. Much has been said about the *Enlevements*, though I am far from thinking, that there is any direct evidence against Sir John and Lady Jane upon this article. The only proposition established by that part of the proof, is That Mignon and Sanry had in the

A a

month

month of July 1748, and November 1749, a child carried off by each of them by foreigners ; but then, upon this point, I must join the *effect* of the plaintiff's proof, to the *defects* of the defendant's proof, and then take the cumular amount of the whole. I have spoke so far, and have given my reasons for being against the defendant. But, I own, I have some doubts, as this is a circumstantiate evidence against him, Whether as he is free of all blame from any irregularity or crimes committed by his parents, whether, therefore, he may not be entitled to lay hold of the mere *possibility* of the fact as set forth by him ; and more especially as he is now in possession of his *state* by a verdict. However, to this, I see one objection, that as a child owes his birth to his father, so he must take his

his state alongſt with the accounts given by his parents ; and, in fact, the defendant's whole plea hangs upon the acknowledgment of his parents.

There were ſome other things which at preſent ſeemed to be ſpecious upon the ſide of the defendant ; particularly, it was aſked, what could be Sir John and Lady Jane's motives for this impoſition of children ? What their motives might be is impoſſible to know exactly, without knowing the characters exactly : and whatever were their characters, it is certain, That the argument of the defendant, that upon the ſuppoſition of an impoſture, it was bringing a needleſs burden and inconvenience upon them, will not apply. For if the conſideration of inconvenience could have had any

weight with Lady Jane, it would have prevented their marriage altogether. Lady Jane, in her letters, uses a certain mysterious way of writing along with the warmest affection towards these children. For this affection towards children not her own, it is indeed very difficult to account: But we must consider that Lady Jane was a lady of great humanity and charity, which might insensibly lead her to contract an affection for these children, whom she had deprived of their true parents. She was also thought a woman of high spirit and honour, which might lead her to compleat, by every possible means, a scheme, bad as it was, which she had once taken in hand.

From all this, then I conclude, that we should sustain the reasons of reduction.

Lord A L E M O R E spoke next
as follows.

I Have formed an opinion conformable to that now given. I attended with all the care I could to the sentiments of those judges who gave their opinions yesterday upon the other side of the question from me. They made me examine again the grounds of that opinion which I am now to give ; and after considering their arguments as much as I could, I found my sentiments rather confirmed than shaken. Though my opinion is clear in this cause, yet I must own it is a difficult cause. This, amongst other things, has been owing to the art

and abilities of the defendant's council, who, in attempting to shake the circumstantiate evidence brought against him, took these circumstances one by one, and then drew their conclusion, that this was all that the plaintiffs had proved. Whereas in stating their own proof, what was but a presumption in one page, was in the next positive evidence, and then rose to a demonstration. All this perplexed me a good deal, and I was therefore obliged to return to the general view of the whole proof in this cause.

There have been some little points of law attempted to be brought into this cause, though the question before us is a point of fact entirely, upon which any man may judge. It is a jury-cause :
and

and it is a cause where every body will judge for themselves, and also judge those who judge it. Much has been said upon the defendant's service, and his possession consequent upon it: I think he was rightly served upon the proof as it then stood, and would then have had the same opinion myself. By the possession of the estate in consequence of that service, the defendant has been enabled to support his defence; but farther than this, what can that service entitle him to in this cause? It is of no weight as to the evidence, because we are to judge of the point of fact.—It cannot have more force than the decret of an inferior court under your lordships review. It must stand or fall upon its own grounds, and can never be held as a *probatio probata*. We sit here, as come in place of
the

the grand jury of error, to consider whether this verdict should be reduced or not. Surely then the thing under reduction must stand or fall according as it appears to us now. I give all the force possible to the arguments drawn from the acknowledgement of parents, but this is not what we all depend upon; we have all habit and repute; the uncontradicted voice of a whole neighbourhood or country, besides the acknowledgement of our parents. But this habit and repute the defendant has not in this cause; on the contrary it appears, that the doubts of his birth were coeval with the birth itself.

It may be asked, whether Lady Schaw, who took the defendant into her family upon the death of Lady Jane, had a firm
con-

confidence in the truth of the birth, when she desires Mrs. Napier to write to Sir James Stewart in France, and says, that she gives her a clew to unravel this dark story. Let us examine Mrs. Napier's letter to Lady Frances Stewart, and we shall there find her expressing her fears lest a failure in success make things less clear than they now are. Lord Cathcart in his deposition says, that he had heard the birth often doubted, on account of the mystery and concealment. But even supposing that the defendant had been in possession of a general habit and repute, it is but a presumption, and therefore must yield to proof. And this proof must, in the nature of things, be a proof of all facts and circumstances. And as the one or the other preponderates, so are we bound to give the cause.

B b

I shall

I will now proceed to state such parts of the proof as to me appears most material. I take up Lady Jane Douglas and Sir John Stewart at Reims, where I think there appears enough upon the face of their own conduct to infer the conclusion, that it was a scheme of imposture they were going on. At Reims, which is one of the most populous towns in France, Lady Jane had an opportunity of getting the ablest assistance; and besides the advantage of several British people there, to whom she daily appeared, and by whom she was much beloved. In this situation Lady Jane passes a whole month at Reims, but at last when the critical period must have been very near, sets out for Paris, attended only by Sir John and Mrs. Hewit. For so unreasonable a journey she can give no reason; she

she gives only a false pretence, that there was no proper assistance to be had in Reims. And for the extraordinary step of leaving their maids at Reims, they give a pretence which is also proved false, that they had not money to carry them to Paris. They arrive at Paris upon the evening of the fourth of July, and put up at the Hotel Shaloons, a respectable inn, to which they had been recommended by Mons. Maillifer at Reims. Instead of remaining in this inn, or even giving Mons. Godofroi or his wife the least notice of the real intention of their coming to Paris, or enquiring of them for the ablest assistance, they suddenly leave his house and hire lodgings at a Madame La-Brune's, where Lady Jane is delivered of twins a few days afterwards, in presence of that Madame

La-Brune, her daughter, and a Pierre La-Marre, who was the accoucheur. Who was this Pierre La-Marre? Says Sir John Stewart, he was a Walloon surgeon, whom he had seen at Liege in the year 1721, but who was then in Paris upon an affair "en epineuse." This whole account given by Sir John, the defendant now gives up. But can he give it up without giving up his cause? Sir John had brought Lady Jane to Paris to be there delivered by the very ablest hands, and yet he entrusts her to the care of a wandering surgeon, whom he had not seen since the year 1721, and who was obliged to be concealed in Paris upon account of a ticklish affair. Did Sir John know where La-Marre lived in Paris? No.—He is prevented from telling Sir John that, on account of the

ticklish affair he came on ; though at the same time he is to be met with on the most public walks in Paris, in the Luxembourg or Thuilleries. Would then Sir John have known where to find this accoucheur if he had wanted him suddenly ? If Lady Jane, for instance, had been seized with her pains in the night ? No.—Sir John declares he would not have known where to find him ; and that if this had happened, he must have called another. When to this we add Mrs. Hewit's account of the matter, that Lady Jane never saw La-Marre till the critical time, I can appeal to the understanding and feelings of the heart of man, that this story has no truth in it. It far exceeds probability ; it is even improbable to the last degree ; so much so that it is impossible these things could have happened

pened upon the supposition of a true birth. Lady Jane had staid a whole month at Reims, though it is now in proof that Paris was the real place of destination. Would it not then have been much more proper to have gone straight to Paris? None of the witnesses at Reims mention the least of any complaint made by her, that there was no good assistance likely to be got there; and there is not the least evidence of the story told, both by Lady Jane and Mrs. Hewit, concerning the advice given her by an unknown lady, to leave Reims on account of the unskilfulness of the practitioners. Mrs. Andrieux never gave her any such advice; for it appears, that she never took her even to be pregnant. However, if they left Reims to go to Paris for the best assistance, it was natural and proper

proper for them surely to have taken the very first advice there ; at least, it is not to be expected that Sir John would have taken so inferior a man as La-Marro was.

I still demand the reason of their leaving their maids at Reims. They give me a reason which I prove to be false. After this, is their deserting Reims to be accounted for to the mind of man ?

The delivery is said to have happened in the house of Madame La-Brune, and we have a most pointed description given of her, of the house, and of her family, both by Sir John and Mrs. Hewit. Yet they could give no description of the house so as to find out in what *place* it lay. In short, this great event of the birth happened

pened in a place which no body could ever either find out or hear of, and which never had any existence ; though it is certain, that the greatness of the event must have rivetted it eternally in their minds. I observe, that wherever there was a real place, thither they have been effectually traced ; but to La-Brune's house they have not been traced, because there was no such person. Upon the ninth day after the birth, according to the account given by them, they change their lodgings, on account of buggs ; and when they appear at Michell's upon that day, they have no child with them at all. Where were their children ? They were sent to nurse. What was the reason of this, of sending them both away they knew not where ? According to their own account, the eldest was
some-

somewhere in the country towards St. Germaine, and they are to go next day from Michelle's in order to bring home this child. Accordingly they do go away, and return again, bringing with them a child in all appearance much older than their child could be, under the care of a nurse who had no milk to give the child, and who had the king's mark upon her as a common thief. Mrs. Hewit has said, that during the whole time Lady Jane was at Michelle's, she never went abroad; whereas it is clear, that she went in a coach to see the most remarkable squares in Paris: and that she went also to see Versailles. Though during all this time she never once went to see her second child, though it was so sickly and tender, and though, according to the account given of it now by the defendant,

C c

it

it was within half a league of Paris. There is one thing very material to be observed in this cause, and that is, that they never wrote to any person of the birth till the 22d July. Was it natural for them to have concealed so joyful an event for the space of twelve days. Would they not rather have taken the very earliest opportunity of communicating to their friends such joyful intelligence.

I come now to examine the evidence brought by the plaintiffs, which to me clearly disproves every part of the accounts given by Lady Jane, Sir John, and Mrs. Hewit. It appears from Monf. Godofroi's books, and he and his wife have also sworn it directly, that Sir John and his company came to his house the 4th July, and continued there till the

13th or 14th. If this be good evidence, what becomes of the birth upon the 10th of that month? According to common rules it is sufficient evidence, and therefore the defendant has made his chief attack upon this evidence. But none of your lordships have said that Monf. Godofroi is not a credible witness; you have only said that he may have been mistaken in trusting too much to the accuracy of his books. I have considered all the objections brought against these books, and I think they have, like fire to gold, brought them out more clear. When then we have such evidence, why should we not believe it? Does it not at least remain good till it is contradicted? Where is it contradicted? By whom is it contradicted? Only by Sir John Stewart and Mrs. Hewit, whom your lordships see

evidently convicted of telling the most manifold falsehoods. To those who shall tell me, that, notwithstanding, they believe the evidence of these two persons, I can say nothing more : to them it must be a clear cause.

On the 18th July they go to Michelle's; but from the 14th to the 18th where were they ? They have not been traced, nor seen nor heard of. In this period there was no birth, and yet when they come to Michelle's, they say they had a child at nurse, whom they go for next day, and bring back with them. And having got this child into Michelle's, they immediately write the letters of the 22d of July, wherein they fix upon the tenth day of the month as the time of the birth. Change of houses must have
neces-

necessarily taken place to accomplish an
 imposture. It was not necessary upon
 the supposition of a true birth. Let no-
 body say there was not time enough to
 pick up a child, when you have it
 proved to you that in that time the child
 of *Mignon* was actually so picked up.
 Having thus got possession of a child,
 could they have returned to the same
 house where they were formerly? No.—
 This would have directly blown up the
 scheme of imposture. They must neces-
 sarily therefore have pitched upon some
 other house to take this child to when
 they should find him; and the house
 they went to for that purpose was the
 house of *Michelle*. I have said, that
 when they made their appearance with
 their child at *Michelle's*, it was a starved
 infant,

infant, upon the breast of a common thief. Was this like the nurse for the child of Lady Jane Douglas ? Mrs. Hewit has herself confessed that they bespoke no nurse before-hand, and the reason as she says was, because Lady Jane was not sure if she would bring forth a living child. Strange indeed ! that Lady Jane, after having put herself to so much expence, and after having travelled so far, should at last grudge an expence which the wife of the meanest mechanic never grudges. How much more like a boy picked up, and a nurse hastily found on the streets, were the child and nurse brought to Michelle's, than to the description of the nurse and child of Lady Jane Douglas.

Madam Michelle in an hour's time found out a good nurse for them ; so
might

might they themselves if they had consulted any person of their acquaintance in Paris. These things are all inconsistent with a true birth, and probative of a false one. When to all this we add, that the child of *Mignon* was carried off from its parents at the critical time, when they pretend to go and bring their child from *St. Germain* : when we take a view of the strange indifference towards their younger child for the whole time they were in Paris particularly—What says humanity here? Your lordships have heard much of the affection of Lady Jane for these children, but this seem to have been taken up at a proper time, after they came to Reims. There was indeed a good reason why Lady Jane did not go to see him ; that was because she had no second boy then existing. How then
was

was this boy purchased? Upon this point the calculation of *Sanry's* enlevement is wonderfully exact. It is brought to have happened either upon Sunday the 16th or Sunday the 29th of November, 1749. The description of the persons applying for a child upon that occasion is wonderfully like that of Sir John Stewart and his company. They ask for a child of fifteen months old. They refuse several of a lesser age, and at last pitch upon a boy of eighteen months old. All these circumstances tend to one point, and meet like so many lines at the point of a circle,

Much has been said of the strong affection shown by Lady Jane upon all occasions for these children. But this affection may be accounted for either naturally

turally or artificially. Lady Jane was a woman of much humanity, and when she considered that the infants she had taken away from their real parents, must now be dependant upon her, the tenderness she was possessed of might naturally yearn upon such a thought; but however that may have been, it was not to be expected that they would be aiding to their own detection of the crime of imposture, by showing upon any occasion a want of affection for their children. But had these children really been their own, they neglected the proper occasion for showing a real fondness for them, by removing the suspicions so universally propagated to their own dishonour, and to the evident danger of their children's interests. But what is their conduct here?

D d

instead

instead of applying to the La Brune or Pierre La-Marre, to get proof of the birth from them, they make a faint attempt to prove the pregnancy by the declaration of Madame Tewis, and forge letters as coming from the Pierre La Marre. Where did ever a true story need such a continued scene of falsehood to support it. But it was said that Sir John forged these letters only with a view to cheat the Duke of Douglas. But why cheat the Duke of Douglas or any other man into the belief of a thing, which, if true, might have been convincingly proved.

In short one certificate from Pierre La Marre and Madame La Brune would have been a mark of stronger affection
to

to her children than any which Lady Jane has shown. I shall now say a very little as to the proof of the pregnancy: this, as described by Isabel Walker and Mrs. Hewit, must have been observed by every body; but their testimonies are so strongly contradicted by others of more credit, that it has no weight with me. Lady Jane seems indeed to have had the *appearance* of pregnancy; but when we consider how many ways there are of simulating a pregnancy, and that this was as necessary as the other circumstances mentioned before, to carry on the imposture, the appearance of pregnancy deposed to has no weight in this case. Upon the whole I sincerely compassionate this unfortunate defendant: I hope the same generous lady who has hitherto so

well supported him will continue her protection and kindness to him, but he must excuse me if I cannot, in opposition to my duty to mankind, my country, and myself, find him to be the son of Lady Jane Douglas. I think that he is not her son, and therefore that the service ought to be reduced.

Lord ELLIOCK gave his opinion next as follows.

THIS is not a question of law but of fact, and therefore I think principles of law have been introduced here somewhat improperly. The defendant in this cause is not well founded in his legal arguments from habite and repute. Habite and repute is public notoriety, it is the uncontradicted, uncontroverted voice of a man's whole neighbours, relations and acquaintances. It is not the bare acknowledgment of the parents that founds this habite and repute, because, when a child is born in any family, there are a number of people in the family who must necessarily have many marks of
of

common Voiture after sitting up most of the night before she sets out, and during the rest of the time of this journey, undergoes much more fatigue than one in the situation she is described to have been in, could be well expected to bear.

This step of their leaving Reims at so critical a period, was of all other the strangest, and which cannot be accounted for upon any other supposition but an imposture; as the reason they gave for it, being that of want of able assistance there, is clearly disproved by numbers of credible witnesses. They left their maids at Reims too, under the false pretence of want of money to transport them to Paris. But why did they not send back to Reims for the maids when they were in Paris so many days before the delivery happened, and when it is clear from their
own

own account, that they had got money.

Sir John, Mrs. Hewit and Isabel Walker, seem all to have sworn falsely upon this point of the money. This is proved by written evidence upon the side of the plaintiffs, a *non memini* is no sufficient excuse, for all that they swear here upon being carefully examined, will appear to be artfully intended as a corroborative to that fact of the birth's happening upon the 10th *July*.

The defendant's filiation comes to a narrow point, which is this, Whether he was born of the body of Lady Jane Douglas, upon the 10th *July* 1748. This, indeed, is the sole point at issue betwixt the parties. I observe, that in the whole accounts given of the alledged birth by all the three persons concerned,

E c

• they

they as long as they could keep in the general. They never specify even the *town* in which the birth was said to have happened : And even when Lady Jane came to be upon her death-bed, and was pressed by Mrs. Grieg to get the proof of the birth established for the sake of her children ; she gives her not the least satisfaction as to the particulars of the birth, but returns this general answer, " Let them that doubt it, prove it."

Certainly, the Duke of Douglas was very much interested to know the particulars of the birth ; and yet, in the letter which Lady Jane wrote to him from *Damartine*, and which is falsely dated from *Reims*, they only acquaint him in general of the birth, and do not so much as mention the *town* in which it hap-

happened. On the contrary, from its being dated from *Reims*, and from the strain of the whole letter, any body would have thought that the delivery had really happened at *Reims*.

When we examine Lady Jane's pocket book, we find the following note of the birth, "Archibald and Sholto were born "on the 10th July 1748." But no mention either of the house or of the town. Mrs. Hewit in her letters from Paris to the maids at Reims, gives no particular place as being the place of the birth; though, afterwards in the letter to the Duke of Douglas in the year 1755, she pitches upon the house of Michelle; though afterwards she agrees with Sir John to transfer the scene to La Brune's. When Sir John Stewart emitted his de-

E c 2
claration,

claration, he was particular and pointed concerning the house of La Brune, being the place of the birth; and indeed, in every other particular of his story: And he delivered the whole of that long declaration with firmness, and had no defect but only deafness, and upon the last day of his examination, when the four forged letters were put into his hand again to consider, he then made several corrections upon that part of his declaration relative to these letters. It is not possible to think, that Sir John could after the defendant's service (upon which occasion, he was, no doubt, consulted by the defendant's council) forget every one circumstance concerning so important an affair as the birth of his sons. And yet, when he was desired by the Hon. Mrs. Napier in the year 1756, to
give

give her a note of the particulars concerning the birth, he then fixes it down to have happened in the house of Madame *Michelle*, and the very first time that he ever takes it into his head to name the house of *La Brune* as the place, was some months after this period, when he found out by the return of Sir James Stewart's letters from Paris, that Madame *Michelle* and her family denied that any delivery had happened there: And it was after this time too that he was obliged to name Godofroi's as a place they had been in. Sir John in his letter to the Dutchess of Douglas, wherein he narrates the particulars of the proof which he could bring of the birth, and more particularly concerning the pregnancy at Aix-la-Chapelle expressly mentions *Lord Blantire* as being at Aix-la-
Cha-

Chapelle at that time, though its confessedly clear he was not *there*. It is exceedingly remarkable, that though Sir John pretends, that his want of memory hindered him from particularly describing the street in which Madame La Brune lived: Yet, he remembers particularly well the situation of the coffee-houses and taverns which he was in use to frequent.

What can be more wonderful added to all this, than the account given by Sir John of his accidental meeting with his old friend La Marre, who had come up to Paris upon an affair *en epineuse*, this was a strange security indeed, for the successful delivery of Lady Jane Douglas. Sir John Stewart has said, That he went first to Paris by himself in the month of
June,

June, or in the end of May 1748. And that he stopt at the house of Monf. Godofroi, where he continued several days; but yet this journey of Sir John's is proved to be an absolute falshood as well as the letters. It is by the defendant himself confessed, that Sir John did not then make a journey to Paris. It appears clearly from proof, that the suspicions of the truth of the birth were very early notified to Lady Jane and Sir John, and that they received these suspicions as being an attack upon their honour, yet there was no attempt made to bring any sort of proof. Why did they not bring such proof? When Madame La Brune and La Marre were both alive, why did not they get certificates of the birth from them?

It is remarkable that the fourth of the forged letters is said to have been brought from La Marre to Sir John by a Monf. Du Bois, a painter. Isabel Walker fwears positively, that she saw this letter delivered to Sir John when in Mr. Murray's, St. James Place, London, but that she does not know by whom the said letter was brought. She further says, that Sir John, upon reading it, damned La Marre, and threw the letter into the fire; but that Lady Jane snatched it up, saying something to this purpose, that the letter should be kept more carefully, because it might be of consequence.

For my own part, I am clear that Lady Jane knew of the forgery of these letters as well as Sir John. This appears to me to be clear from the particulars

culars of the conversation which Lady Jane had with Mrs. Menzies upon her intended journey to Douglas-Castle; and she expressly mentions to Mrs. Menzies, as a proof the birth, letters which she had from the doctor who delivered her, and which letters she said she had then in her pocket. These letters could be no other but the forged letters now in process.

I have said that the proposition maintained by the defendant is, that he was born of Lady Jane Douglas in the house of Madame La Brune, on the 10th July 1748. What then is the evidence he has brought of this. It cannot be the four forged letters, neither can he rest upon Sir John's accounts of it, because they are proved to be absolutely false.

F f

As

As to the house of Madame La Brune, there is no proof brought of there ever having been such a house ; on the contrary, I think the written evidence produced by the plaintiffs, that the Madame La Brune specially described by Sir John and Mrs. Hewit, never had any existence. I think she was a non-entity as much as La Marre was. I am not moved with the defendant's having found out a woman of the name of La Brune, and who was a Gardes Malades ; as she does not answer, in any one particular, the description by Sir John, of the woman in whose house the birth is pretended to have happened.

This proof so far as it goes, is to me convincing and credible, that there was no delivery at all : but the evidence
of

of the *alibi* in Godofroi's, put the thing past all doubt. It is clear, positive, direct and credible, both upon the books and the oaths of him and his wife.

Whose child the defendant is, is a question not necessary to be here discussed, though it is most probable to me, that he is Mignon's; at least, all the circumstances of the first appearance of the child and its nurse at Michelle's, makes it rather more credible to me, that otherways, That Sir John stole Mignon's child, as also the child of Sanry in November 1749, which happened upon the fourth day after they arrived in Paris, when they went upon the false pretence of their bringing home to Reims their second twin. Since I have

mentioned the second child, I must observe, that *Doct^r Menager* has in his oath raised a fabric that cannot stand; because he swears, that La Marre told him, he was bespoke to the foreign Lady some time before hand, and as to Madame Garnier, I no more believe that she was the nurse, than I do that La Marre was the accoucheur.

Thus I am clear, that the crimes of imposition of children was really committed by Lady Jane and Sir John. I do not chuse to enquire into their motives for this crime; though I can easily see one that would influence them very much. And that is, to get money from her brother, the Duke, on account of her having children; and in fact, I see that this scheme was immediately attempted to be put into execution.

As

As to the pregnancy upon which the defendant has founded so much, I am clear, that it is disproved by the plaintiffs. And therefore, upon the whole, I am clear of opinion the service falls to be reduced.

10th July.

Lord STONFIELD spoke
first this day, to the following
Purpose :

THE bulk of the proof and memorials in this cause renders it difficult to form an opinion upon it. I have considered it with all the attention in my power, and have formed my opinion against the defendant.

I did not expect to hear in this cause the proceedings in France and the Tournelle process compared to forgery and the blackest crimes. I have no such opinion of the proceedings in France.

I think

I think the conduct of the gentleman who managed these proceedings upon the part of the plaintiffs, does honour to himself and his profession.

I think that the point of law has been pleaded too high by both sides, I mean as to the question upon whom lies the *onus probandi*. Such services generally proceed in a very slovenly and loose manner. Hence, says Lord Stair, they are easily reduced. It is therefore sufficient to bring against a service what may preponderate on the part of the plaintiffs. And thus far they are obliged to prove, and no farther.

The first point of this cause is the appearance of Lady Jane's pregnancy, which appearance is very strongly proved ;

ed; but then this proof is very inconsistent, and contradictory to the notion of a real pregnancy. Pregnancy requires a very particular investigation, and is very difficult to prove. At any rate, the whole of this evidence amounts to the *appearance* of pregnancy only, and if to this we add the way and manner in which Lady Jane performed her long and tedious Journey from Aix-La-Cha-
to Paris, without taking those precautions which would have been necessary upon the supposition of her being so near the point of delivery. All these circumstances denote rather a *feigned* than a real pregnancy. They go to Paris accordingly, without making known to any of their most intimate acquaintance at *Reims*, the real object of their journey. They even make use of a false pretence to *Monf. Mallifies*, and obtain a letter from
him,

him, recommending them to Monf. Godfrois, as people that were going to Paris to make purchases. When they arrive at Paris, they make no enquiries after their countrymen there, which is very natural to expect they would have done; more especially, it was natural for them to enquire after Sir William Stewart, whom they had seen at Spaw, and the Chevalier Johnston, who was Mrs. Hewit's cousin-german. When they leave the Hotel Chalons, they repair to the house of a Madame La Brune, as they say, and on the sixth day after the delivery they remove from this house, and take up their lodgings at Madame Michelle's; and when they first appear here they have no child with them, but having gone out next day to bring their child in from the country, as they pretended, they return the evening with a

half starved child, and a nurse who had no milk, and was branded as a common thief. In the mean time, their second child, though weakly and tender, is deserted from its birth, never once seen by Lady Jane herself during the space of sixteen months.

If we examine the accounts of La-Marre, they are so vague and absurd, that they merit no faith. There is a wonderful contrast between Sir John's account of him, and the defendant's account of him now in process. And I cannot think the defendant is at all aided by Doctor Menager's account of La-Marre's conversations with him about the delivery of the foreign lady; and as to Madame Garnier, the pretended nurse, she seems to have borrowed the nursing of
some

some other child, and applied it to this. And it is remarkable, upon her oath, that though she swears that she often saw La-Marre, yet she cannot describe him in the least degree.

As to Godofroi's books, it is my opinion, that when these stand so clearly supported by his oath, they carry conviction that there was no delivery upon
10th July 1748.

As to the enlevements, I shall only observe, that they are very remarkable in time, and suspicious in circumstances. When to all this we add, that they falsely dated all their letters from Reims when they were truly in Paris, and that the strain of most of these letters tended to make their friends believe, that the delivery had actually happened at Reims,

What conclusion can we draw from all this, but that the story was false?

Lady Jane and Sir John were early apprized of the suspicions of a false birth, and yet they never took any steps to prove the truth of it, excepting only one feeble attempt to prove the pregnancy, at its most fallible stage, by the declaration of Madame *Tewis*.

Last of all come the *forged letters*, which finishes the evidence against the defendant, and compleats the story. Attempts have been made to excuse this forgery, but these attempts are vain, because the question will forever recur, Why use falsehood to support truth? I must own the strongest proof on the part of the defendant is Lady Jane's private
 3 letters ;

letters ; but then when we consider, that very probably length of time might make her contract an affection for these children, the proof of that affection which appears in these letters cannot much be depended on.

I therefore think the reasons of reduction fall to be sustained.

Lord P I T F O U R next delivered his opinion for the defendant, to the following purpose :

IT seems to me, that the rules of law are likely to be altered, in determining this case, and where it will end no body knows. The birth-right of the subject is of all other rights the most sacred, and indeed the foundation of all temporal blessings. It is from this that all the joys and the advantages of relation and of consanguinity do flow, and it is upon this that citizens are entitled to the participation of public honours, and the encrease of their own fortune and rank. On all these accounts, therefore, this right of birth, or *state* of a man,

man is most cautiously guarded by the
law.

The act of delivery is often transient, and over in a moment. Witnesses are therefore seldom called, and sometimes it is impossible there can be any witnesses at all; and for this reason the law does not require a proof by witnesses. Nay farther, the more a proof against the *possessio status* shall encrease, the stronger hold the law gives to the person who claims his filiation.

I am far from thinking that there is any kind of evidence brought by the plaintiffs sufficient to remove the defendant from the possession of his state. The acknowledgment of the defendant's parents, and the habite and repute following thereon, was
suf-

sufficient for him to attain the possession of his *state*. I don't chuse to dispute points that will not be much controverted; but when I speak of the acknowledgment of parents, I mean an acknowledgment of parents supported by the *fama consensuens*, or the habite and repute of the place of the birth, whether it be at home or in a foreign country.

The empire of Great Britain is now extended over a large share of the globe. Many thousands of British families have transmigrated to America, the East Indies and elsewhere. A man in America has his children acknowledged there to be his lawful issue, but upon his coming home with his family to Britain, he finds the birth denied here. The reason of this perhaps may be, that a great succession
might

might probably devolve upon these children, and that some other people having hopes of the same succession may have designedly raised these suspicions about the birth. And that these same people tell us he must prove his birth and the whole circumstances attending it,

Such notions of law would indeed be very extraordinary.

When my birth is challenged, and I am in possession by the acknowledgment of my parents, and have the habite and repute of the country wherein I was born, there must be demonstration before I can be turned out of possession. In the present case the defendant has not only the acknowledgment of his parents, but the universal voice of the country he was

H h

born

born in, infomuch, that of eighteen *British* witnesses then residing in France, and acquainted with Lady Jane, never one of them heard the least suspicion of the birth till they returned home to Great Britain. At home indeed false impressions had been carefully made, founded principally upon the age of Lady Jane, and the improbability, said from thence to arise, that she could have children. Whereas it is in proof, that she was capable to have children for two years after the defendant's birth. And in particular there is one miscarriage after the year 1748, proved by three or four witnesses. What shall we say to all these things? Were common reports to have any effect upon this cause? —they had no effect upon it. For fourteen years *after* the birth, even at the time of the service, the plaintiffs themselves
were

were overpowered with conviction, and acknowledge they were satisfied with the force of the evidence.

Whatever false rumours may have been raised on purpose to detract from the character of Lady Jane Douglas, when she was unluckily thrown off by her brother; yet his Majesty, as the common father of his people, was graciously pleased to bestow upon her a pension towards the maintenance of her and her children, which circumstance is surely strong and corroborative of the general belief of the birth.

Lady Schaw's enquiry, by the means of Mrs. Napier, has been founded on against the defendant, in order to redargue the habite and repute which he pleads. But I apprehend that Lady Schaw's enquiry can-

not be viewed in this light. It rather appears, that the reason of her making the enquiries was, to get some proper evidence to oppose to any attempts of the plaintiffs in an after-time, and by no means to satisfy herself.

Nothing can interrupt the Possessio Status till the action is actually brought against the person claiming upon that possession; and if we do not adhere to this salutary rule, in the case now before us, we shall encroach on the birth-right of all mankind. And therefore it has been improperly enough said, that points of law are not to be treated of here. The whole doctrine of law concerning the Possessio Status, and habite and repute, come properly in here; these doctrines of law being

ing founded upon common sense and the necessary security of the subject.

I come now to speak of the proof which the defendant has brought of his birth. And 1st, as to the pregnancy, this must have great influence in this cause; the witnesses who depose to it are very many in number, people of respectable characters, not acquainted with one another, and who had no interest whatever to give a false account. Had this pregnancy been like that of Lady Kinnaid, which was shewn upon every occasion with the grossest affectation, we might have had reason to doubt of it: but so far was Lady Jane from publishing her pregnancy, that she seemed to be bashful and shy when the curiosity of her domestics and friends prompted them to satisfy themselves

selves how the matter stood as to her pregnancy. Isabel Walker, whose testimony I do firmly believe, solemnly swears, that " she felt the children move in Lady Jane's belly." Madame *Tewis's* declaration, I think too, good evidence of the same fact ; as I do likewise that of *Effy Caw*. Because these declarations on account of Mrs. *Tewis* and *Effy Caw* being dead before they could be put upon oath, are the best evidence possible. In short, there is no single testimony upon this point of the pregnancy, but what is corroborated by others. And when to all this we add Mr. *Andrew Stewart's* own confession, that there were all the proofs in the world of her pregnancy, why should we doubt so much evidence ?

I cannot

I cannot understand the argument, that the proof of pregnancy is not sufficient to infer the consequence of the birth. I think quite otherwise. If pregnant, she must have been delivered; and therefore there is a high probability at least that the whole account of the delivery, given by the parties, is true. It is a *talis qualis* proof, the best proof that the nature of the thing will admit of, after so long a lapse of time. If the proof had been brought sooner it would have most likely been much stronger on the side of the *defendant*. By the common course of things, as well as by accident, he must have been at great loss in bringing a proof so late. Many of his witnesses have died, and others of them have changed the places of their abode, and cannot now be discovered. Why, then, was not this
 action

action brought sooner? What excuse for this? Why did they keep it in petto? Why did they keep the challenge so long in their pockets? Yet such are the facts, and therefore the law makes a less proof necessary now than it would have exacted before from the defendant. The whole story concludes, not with the idea of imposture, but remarkably well with that of a real birth. Much has been said about their going in a secret manner to Paris, without letting their friends know; though it is clearly in proof that the *Chevalier Douglas* gave it as his advice to Lady Jane to go to Paris to be delivered.

As we have had so much evidence of the pregnancy, which is a gradual advancing thing, why should we insist for such
pointed

pointed evidence as to the act of delivery, to which there cannot be so much evidence expected as to pregnancy; because this by the common course of nature may be gradually traced, and so liable to the observation of many witnesses every day, whereas that is a single act, and often over in a moment. Upon these principles, the law makes the presumption of a birth rise gradually, according to the advancement of the pregnancy.

Much has been said about La Brune's house, and particularly about the extraordinary account of their having left it so soon after the birth. Whereas, we see in proof, that the real motive of leaving it so soon was, because they were pestered with bugs. And accordingly, when they come to Madam Michelle's, we find them

anxiously enquiring of her if her house was free of that vermin. And afterwards we find them complaining of their being troubled with them there too.

But, say the plaintiffs, Sir John is charged with being the contriver, and Mrs. Hewit with being an accomplice in this fraud, and therefore you are not to believe any account they give. But if this charge brought against Mrs. *Hewit* (and *Isabel Walker* too) of being accomplices in this alledged fraud, should be sufficient to destroy their credibility, then the plaintiffs might have had a clear cause of it, and used the same freedom with the defendant's other witnesses, and so set them aside altogether.

In corroboration of the truth of the testimony emitted by Sir John and Mrs. Hewit,

Hewit, and of the uniform account given by Lady Jane, That these children were truly her's, you have the solemn death-bed declarations of all the three. In the present age, infidelity and scepticism are accounted fashionable; but I will aver, that this is more owing to pride and affectation than to any conviction *possible* to the mind of man, That there is *no* future state of rewards and punishments; and I do believe that there are but a very few who are so execrably worthless, and insensibly hardened, as to make a joke of *eternity*. Some malefactors there may have been, who, after having been fully convicted of crimes, may have gone to death publicly denying them. But there was no conviction, nor the least danger of conviction to the parties in the case now before us; and when to this we add, that their characters are proved to have been

not at all of the infidel cast; what conclusion can we possibly draw, but that they died asserting the truth? And when to this we *still* add the great distress and affliction which both Lady Jane and Sir John were almost always under, and at the same time see them upon every occasion expressing the most tender solicitude for the welfare of their children, whom they were then scarce able to maintain: all this behaviour speaks out strongly, that they were indeed their own children.

In opposition to this, it has been said, that Lady Jane deserted her youngest child from its birth, and that she never went *once* to see it during the long time she remained in *Paris*, and at *Dammartine*. But in answer to this, I observe, that the plaintiffs are not entitled to plead so high upon
this

this point ; I will presume that she did see her child, although it cannot be now proved *post tantum temporis*.

Another argument has been used by the plaintiffs, viz. That she had no nurse bespoke ; to which I answer, That La Marre himself bespoke a nurse, as is clear from the testimony of Madame Garnier, who was herself the nurse of *Skolto*.

It has been said by the plaintiffs, That the La Marre now founded on by the defendant is a *new* La Marre, and that he cannot be the La Marre which *Sir John* gives an account of. It is curious to observe the conduct of the plaintiffs upon this great point of their cause. At first, in their condescendance, they denied point blank, that there was any person of that

name who was a surgeon or accoucheur in Paris in the year 1748. And now that an *accoucheur* of that name has really been found out, the plaintiffs take hold of the particular description given by Sir John Stewart of the La Marre, whom he condescended on as being the *accoucheur* ; and because *this* La Marre does not in every particular agree to Sir John's description, the plaintiffs infer the strong conclusion, that it is impossible that the La Marre now found out could have been the accoucheur to *Lady Jane Douglas*. The plaintiffs have particularly laid hold of two circumstances in Sir John's account of *La Marre* ; one of which is, that he was a *Walloon* ; and the other, that La Marre had been introduced to Sir John at Liege in the year 1721, by one Col. Fountain. As to the first of these circumstances in Sir John's description

scription of *La Marre*, the plaintiffs are clearly under a mistake; for as the *La Marre* founded on by the defendant, was born at *Montrieul sur le Mer*, he might readily enough, in respect of his country, be termed a *Walloon*, or at least Sir John might very naturally take him for a *Walloon*. And as to the other circumstance about Sir John's having seen him at Liege in the year 1721; this is evidently an error in point of time only, which it is not at all surprising Sir John should have been guilty of, if we consider the great variety of questions put to him, and his age and infirmities at the time he gave his declaration.

It has been argued by the plaintiffs, That the story told by Madame *Garnier* of the manner of that child's being brought to her house, cannot apply to the child of
Lady

Lady Jane Douglas: in so far as *Madame Garnier* depofes, That the child which *Pier La Marre* delivered to her to be *nursed*, was brought to her house at night with *flambeaux*, or torch-light, from which, say the plaintiffs, it is clear, that this could not have happened in the middle of summer, as there would have been no occasion for *flambeaux*. But if we confider the length, narrowness, and dirtiness of many of the lanes and streets in Paris and its environs ; and also that it is not so long light there as it is here at that season of the year, we shall find the circumstance of the child's being brought by *flambeaux* not to be inconsistent with the notion of the child's having been carried to the *haute borne*, late in a summer night : and when to all this we add the precise and pointed conversation which *Pier La Marre* had
with

with Dr. *Menager* upon the subject of his (*La Marre's*) having delivered a foreign Lady, of an advanced age, of twins, and that these twins would be heirs to a great estate in their own country, and that it was a great affair for him. And when we consider also Madame *Guinett's* evidence, who positively swears, That she frequently saw Pier La Marre visiting the child when it was under Madame *Garnier's* care, is it possible to figure a stronger circumstantiated evidence in any case whatever than this evidence brought by the defendant to support the truth of his birth? I am clear it is as strong an evidence as we can at so great a distance of time possibly expect, and therefore give my voice for affoiling the defendant.

Lord GARDENSTON spoke
next as follows.

THIS is a very extraordinary and a
very singular cause ; Duke Hamil-
ton has nothing to gain, and the defendant
has every thing to lose.

My opinion is for the defendant; I will
deliver it with brevity and precision: and
as the grounds of it are few and simple, I
will not take up a large field, but only
state some points on both sides, which have
led me to form this opinion. But first, I
will beg leave to state some preliminary
observations, which appear to me to be
of great importance. And, first, I can by
no means agree with those of your Lord-
ships,

ships, who have given your opinion, That the *law* has nothing to do in the present case: it appears quite contrary to me; I look for light to the law, and more particularly to that great branch of it contained in the title *de Probationibus*, in which there are principles enough to determine us in our judgment of evidence in every possible case. Secondly, I do own it as a principle of law clear to me, That where-ever a person is acknowledged and entertained by his reputed parents from infancy to manhood, he cannot be turned out of the possession of his state without a clear, distinct, and demonstrative evidence.

By these rules the present case falls to be determined, though I confess I will consider the question as if it had come first before ourselves, and without any

regard to the *verdict* formerly pronounced for the *defendant*. In so far therefore I am a convert to an opinion delivered yesterday ; but upon these first principles which I have laid down the proof against a defendant in such a question, must appear without any uncertainty, and there must be no room left for the calculation of chances.

This appears evidently to me to be well founded in *humanity*, *expediency*, and *law*. As to the first of these, the humanity, it is so obviously on the side of this defendant, that I need only but mention it: The expediency is also so manifest, that it would be needless to insist on it---The security of families and the peace of society speak it out abundantly plain. And as to the *law* : the law of this country, and
of

of every other country in the world, does uniformly require in all proofs of the kind before us, the most clear and convincing evidence against the rights of *filiation*.

A second proposition I will lay down without arguing for it, which is, that where such a question as this is brought so late, the evidence of such witnesses as may be now *dead*, will, when reported upon oath by others, have the same strength as if these others had been alive now, and had been legally examined themselves. My third general observation is, That I see no improper thing, nor ill conduct on the part of the *defendant* in this cause: whereas on the part of the plaintiffs, I see most improper and most illegal conduct. I see the *Tournelle process*, the *Monitoire*, and all their miserable effects.

I do

I do not blame Mr. *Stewart* for his conduct in these matters: he is a man of honour and of character, and was instructed to carry on these French proceedings by the rest of the tutors of the noble plaintiffs: but however that be, I will define the *Tournelle* process to be what I really think it was, “ an indirect practice to “ prejudice the evidence, and to deprive “ the defendant of a fair trial.” I pretend not to the spirit of prophecy; but it is long since I have said that the plaintiffs will find the *Tournelle process* to hang about their necks like a mill-stone, for in vain (as was said in another place) are judges wise and upright, if the channels of justice shall by such means as this be corrupted.

As to their *Monitoire*, it was such a one as was never seen but in the case of *CALAS*,
which

which proved fatal to an innocent family, and is a reproach to the annals of justice.

I come now to say a few things upon the evidence produced in this cause: and, 1st, I observe, that taking the whole of the defendant's evidence by itself, it seems to me impossible that there could be a stronger proof brought of the birth after so long a time, and upon so unexpected a challenge.

To me it is just as credible that a woman of fifty years of age, of *ability* (as is clearly proved here) should have children, as that a woman of twenty-five years should have them.

I cannot doubt that *pregnancy* is a thing capable of proof: it is held to be so in the
law

law of Scotland, and in the *civil law* likewise. And if it is capable of proof, it is surely proved in the case before us. Pregnancy may be forgot, or it may be remembered as it happens ; but what proof of it can you expect ? is it by the testimony of friends, domesticks and acquaintances, or by that of strangers ? It is by the first, surely ; because the law expects the best causes of knowledge from those who in the character of domesticks, attendants and friends, are most frequently about the person, and have the best opportunities to know. Accordingly, in the cause before us, you have clear and pointed evidence, by *such* persons, that *Lady Jane Douglas* was really pregnant. Her pregnancy, then, so clearly ascertained, is truly a proof of the delivery ; because if she was pregnant, she must have been delivered.

This

This therefore brings me to mention, that besides the proof I have noticed, there is a positive proof of the birth of the defendant, by two witnesses. I mean, Sir John Stewart and Mrs. Hewit, both of whom were called as witnesses, not by the defendant, but by the plaintiffs. When to this is added the strong circumstances in the behaviour and conduct of Sir John and Lady Jane towards the defendant, what doubt can remain that he is really their son? Amongst a number of other circumstances, I shall mention these following. Their private correspondence strikes me strongly, and it is not credible to me that all the scene therein exhibited could be dissimulation. It is the same thing in my view as if two alledged confederates in a crime had been overheard talking together in the very next room, and had we so

L 1

overheard

overheard them, breathing such strains of truth, sincerity and affection towards their sons, would we not believe it? But even supposing we should disbelieve this, could we carry the supposition so far as to believe that Lady Jane would absolutely break her heart, and die for love and affection to a child not *really* her own? And yet that grief for the death of her son *Sholto* was the more immediate cause of her death, is proved by the testimony of respectable witnesses. But still more, when I see her in the pangs of death, pouring out her blessings on her then helpless son, the defendant, can humanity allow me to believe that all this was falsehood and hypocrisy? Can we believe that when she was praying with her last breath for the defendant, *as her son*, that she was then, when just going to appear
before

before her maker, taking HIM witness to solemn falsehood? Thus much for the proof on the side of the defendant.---I now come shortly to touch upon that brought by the plaintiffs. Theirs is a circumstantiate evidence wholly, and many of the circumstances are of no weight at all: I am sensible, however, that when men have once formed an opinion of guilt, they are often apt to look at every thing as through a jaundiced eye, which makes every thing of the same colour with itself. I will however consider some of the most material parts of this large circumstantiate evidence upon the side of the plaintiffs. And 1st, I mention *Godofroi's books, with the oaths of him and his wife*. First, as to his *books*, I declare from the bottom of my heart, that they have no credit with me. When I consider the nature of a tavern

L 1 2 reckoning

reckoning or bill, extracted at the distance of fifteen years, I can have no notion of giving mighty credit to this sort of written evidence. We have all heard of a person in London, known by the name of Mother Douglas: she, it seems, kept her books likewise, upon which her representatives are now prosecuting some respectable personages in this country. It is not to be credited that such personages ever frequented her house. But though they had so frequented her house, they would have surely paid off their bills, and will not now be condemned upon the written evidence of tavern books.

I must observe that Michelle's books were found to be erroneous, and therefore left off altogether by the plaintiffs, who then, for the first time, resorted to those of Godofroi; whereas to me both these grounds

grounds appear equally tenable, and you may lay hold either of the *one* or *other*, as you please.

There is one reason indeed why Michelle's books appear more credible than Godofroi's, which is, that where people go only to eat for a day or two, as at Godofroi's, there the date is of no sort of moment; but where they go to lodge for a time, as was the case in Michelle's, there the date is of moment.

I observe, thirdly, That these witnesses are tainted by the Tournelle process: Madame Godofroi's oath is utterly incredible, because she persisted in saying, when she was first enquired out, That she could not recollect any one thing about Sir John Stewart and his company. When after
this

this I see her come and join in telling very many material circumstances along with her husband, can I think her a credible witness?

Farther, Madame Godofroi has sworn, That when she applies a *blank* article in her book of expence to her book for the *Inspecteur* of Police, it is conjecture merely, upon her part. This assertion of his wife's invalidates Monf. Godofroi's positive assertion, which he has expressly swore to in very different terms. Fourthly, It is in this single instance only that Monf. Godofroi can take upon him to fill up any blank articles in his books, though there is some of these entered only a *year or two* ago. For all these reasons, I think there is not the least proof of the alibi in the house of Godofroi,

I now

I now come to mention some other circumstances, such as the concealment and mystery which was alledged to attend the whole of the conduct of Sir John and Lady Jane. It was here used as an argument to infer fraud, that during the time of her pregnancy, Lady Jane almost always wore a particular dress, and never went without a hoop. But it is inconceivable to me how this circumstance can ever be founded upon to prove an imposture. To me it appears directly contrary; for surely if her pregnancy had been entirely affected, instead of concealing, she would have taken every opportunity of showing it. Another circumstance pleaded by the plaintiffs, was, That Lady Jane never called for the advice of any physician, surgeon, or accoucheur during the whole time of her pregnancy. As to which,

which, I beg leave to observe, that however odd the plaintiffs may think this, yet Scots Ladies will not surely think so. They are generally pretty easy, and free of apprehensions upon this point, and can do without a physician at their bed-side every hour of the day.

Much stress has been laid upon the circumstance of their journey to Paris, which has been represented as the object of their secret destination from first to last; whereas it is in proof, That Lady Jane was really advised by the Chevalier Douglas to go to Paris to be there delivered.

The circumstance of their employing so obscure a man as La Marre, after they had said that they went to Paris for the best assistance, has been also laid hold of
by

By the plaintiffs; whereas Sir John expressly swears, That he desired La Marre to have other assistance ready at hand, which La Marre would have got, had he not easily accomplished the delivery himself.

Much has been said also of the circumstance of the younger child's being sent into the country, and about Lady Jane's never having seen him there. To which it is answered, That the child being sickly and tender, did upon that account want fresh air; and that it is not in proof that Lady Jane never went to see him.

I now come to mention some other circumstances; the first of which is, That of their leaving their maid-servants at Reims, and to which I do own I see no reasonable or satisfactory answer.

M m

As

As to the forgery of the letters, I see no evidence of a forgery, in so far as Sir John said they were *copies* of letters. But even supposing them to be forged, I cannot carry it so far as to deprive the defendant of his state upon that account merely.

Had the parties been all now alive, they might have been able to account for many circumstances in their conduct, which are seemingly suspicious to us, in the same manner as the circumstance formerly mentioned of their having dropt their man-servant at Liege has been accounted for. And when to this we add the strange and singular characters of Sir John Stewart, the principal actor, we need wonder the less at many of these circumstances. I shall now conclude with observing, that if the plaintiffs prevail in this suit, the defendant's case will indeed be singularly hard : For in
the

the first place he has never had a fair trial for his birth-right. I do not mean here, but in France. And, 2dly, of all the numerous cases of *partus suppositio*, there is none similar to this; none of those children were possess of their filiation; in none of those cases was there the same strong proof of pregnancy, nor such direct and circumstantiate evidence of the *actual delivery*.

July 10.

Lord K E N N E T spoke first
this day as follows,

THIS cause being of so great importance and expectation, it is highly reasonable that each of your Lordships should give his opinion upon it. My plan is to deliver my opinion upon the principal points of the cause, most of which have been already stated with great propriety by those of your Lordships that have spoke before me.

I do not think myself capable to persuade any of your Lordships to be of my opinion. And though I thought I could do so, yet I would be very far from desiring it.

My

My opinion is then for sustaining the reasons of reduction.

The first question before us is, Upon whom lies the *onus probandi*? Upon which I observe, that when a person claims, he must prove his propinquity, or at least he must have the acknowledgement of parents, and a habite and repute general and uncontradicted. Such a proof as this, however, cannot be called a *probatio probata*. Neither is the acknowledgement of parents a presumption *juris et de jure*: for then no proof at all would have been allowed in this cause. The consequence of this is, That the *onus probandi* lies upon the plaintiffs, who must therefore bring a clear, convincing, and demonstrative evidence to support their challenge of the birth.

When

When I lay down these principles, I do not, as was hinted yesterday, shake the security of the subjects birth-right, since it is clear, That every person must remain in the possession of his state upon the legal presumptions for filiation, till it be clearly and convincingly proved, that such person is not entitled to that filiation.

An objection has been moved for the defendant, on account of the lateness of bringing the present action against him ; but upon a little consideration, this objection flies off, as it is clear, that the plaintiffs had no right to bring such an action till after the death of the Duke of Douglas. And as to the distance of time so much complained of by the defendant, it is really as great a loss to the plaintiffs as to him ; and indeed I rather think it had
been

been happy for this defendant if the action had been still later; and that Sir John and Mrs. Hewit had both of them been dead before they could have been examined in the cause.

Of all evidence to prove a crime, such as that of the *suppositio partus*, the circumstantiate evidence is the most convincing; and what is more, the least suspicious.

In judging of such a proof, the whole circumstances must be taken together. Some by themselves may appear trivial, which, when joined to others, appear exceedingly material. I considered the plaintiffs proof even with a prejudice for the defendant, and I examined his proof to find out circumstances to make me believe that he was the son of Lady Jane ;

which I sincerely declare I much wished to be the case. But motives of compassion cannot now have weight with me; for when I sit as a judge to determine a case of property like this, I must go on in the straight road of evidence, without turning either to the right hand or to the left.

The pregnancy of Lady Jane Douglas is in course the first object of proof in this cause, and I must acknowledge, that I think there is a clear proof of the appearances of pregnancy; but then I consider, that such appearances are often very deceitful, and that they cannot be well distinguished from an affected pregnancy. Of this we have many instances in that famous title of the Roman pandects, *de ventre inspiciendo*.

The

The proof of pregnancy brought for the defendant, is a proof of opinion by the witnesses merely ; who, I dare say, have deposed according to their own belief ; though I think their depositions not sufficient to establish the truth, that Lady Jane was really pregnant. It deserves attention upon what different grounds the different witnesses formed their opinion of the pregnancy ; and more particularly Sir William Stewart and his Lady say, they thought Lady Jane pregnant, because she was pale of complexion, and had frequent vomitings. As to the paleness of her complexion, that appears to have been natural to her ; and as to the vomitings, it is in proof, by the oath of Isabel Walker, that she had been often troubled with these even before she left Scotland. Mrs. *Hewit* and *Isabel Walker*

N n

are,

are, no doubt, the capital witnesses for the defendant upon this point of the pregnancy. But then, their testimonies appear to me highly suspicious in many respects, and in none more than in what they have said as to the prodigious bulk of Lady Jane even before she left Aix-la-Chapelle. For if the bulk had been as both these witnesses represent, it is incredible to suppose, that so many witnesses, to whom Lady Jane daily appeared throughout her journey, should never have observed it. Mrs. Hewit deposes, That when they were at *Reims*, Lady Jane was so very unwieldy, that she never went abroad but once: Whereas the Abbe Hibert walked with her often in the most public places and walks about *Reims*.

At the same time, as it is certain, if Lady Jane had been pregnant, she must
have

have been delivered; I thought if I could find out a *real* bulk when seen without her cloaths, it would go far to instruct the defendant's plea.

With this view, therefore, I carefully considered the evidence of Madam Tewis, Mrs. Hewit, Isabel Walker and Mrs. Hepburn of Keith. As to Madam Tewis, she appears to me to have declared things which could not possibly exist at that time, at so fallible a stage of her pregnancy. But it is my opinion, that having been drawn in to express herself too strongly upon this point to Sir George Colquhoun and Colonel Douglas, she was thereby obliged to repeat the same afterwards in her judicial declaration.

The amount of Mrs. Hepburn's oath, is, that upon coming one day into Lady Jane's bed-room when she was dressing, she observed her breasts to be of so large a size, that she had no doubt of her being with child. But these marks are still too fallacious, and therefore I was willing to take in here the declaration of *Effy Carw*; but then this declaration of hers amounts to an opinion only, and that opinion formed without any opportunity to know.—

Isabel Walker and Mrs. Hewit have gone much farther upon the side of the defendant, but then they have sworn to many things which are not true. Isabel Walker, particularly, is incredible when she swears as to the height of the beds, and that upon that account, Lady Jane

Jane was obliged to use a stool to get into them. This witness has sworn, that Lady Jane employed no mantua-maker at *Reims*. And she has deposed very particularly, but very incredibly, as to her conversations with Mrs. Andrieux there. She is also no less incredible, as to what she relates of a conversation which she says, she over-heard betwixt Lady Jane Douglas and the late Lord Prestongrange upon the subject of the birth of the children. Perhaps, my lord might say to Lady Jane, that she was not bound to prove the birth, but surely his lordship would never advise her against providing herself with proofs to be used afterwards, if there should be occasion for them.

Lady Jane and Sir John gave many different pretences for their leaving Aix-

la-

la-Chapelle. There is one circumstance particularly that strikes me strongly. I see that Mrs. Tewis offered to procure for them the castle of the count De Salm, where Lady Jane might have had every thing convenient for her approaching delivery; and that Mrs. Tewis did accordingly write to her friend the Great Bailiff of the Count, desiring accommodation for Sir John and Lady Jane in the castle of Bedbur. It might have been expected, that Sir John and Lady Jane, as they had agreed to petition the Count De Salm for this favour, would have waited for his answer; but instead of that, they suddenly leave Aix-la-Chapelle under pretence of the imminent hazard of an approaching delivery, and set out for *Reims*, where, nevertheless, they continue to remain for the space of a month.

How

How ill then does this agree with their pretence for not staying but a few days at Aix-la-Chapelle, when they might have got their answer from the Count De Salm ?

After having remained so long at Reims, they suddenly set off for Paris, and leave their maids behind them at Reims, at a time when of all others they had the most need for their attendance. For this strange conduct, in their not taking the maids alongst with them, the want of money was given as a pretence which is clearly proved to be false, for Sir John had at that time a credit for no less a sum than 2,000 livres,

I now come to the proof of the delivery. The defendant was not bound to
 prove

prove the delivery, and it lies upon the
plaintiffs to prove the falsehood of it.
But then, if the only three persons con-
cerned shall be found to give inconsistent
and false accounts of this matter, this
must go a great length to disprove the
birth. I have heard it said, that the de-
fendant has proved his birth by the direct
testimony of two witnesses, Sir John
Stewart and Mrs. Hewit. I own, I can-
not understand this argument. If it be a
good one, there is a ready way laid to
accomplish an imposture at once; but
supposing, that not only two, but twenty
witnesses had sworn directly to the birth;
yet still, the plaintiffs might have proved
the falsehood of it by contrary evidence.
I have mentioned the accounts given
by the parties themselves: with respect
to

to *Lady Jane*, we see her always speaking in general ; the only time she came to particulars, was in a conversation with the Countess of Stair, as it stands deposed to by her daughter the Hon. Mrs. Primrose. Lady Jane well knew, that there was plenty of good assistance to be had at *Reims*. And therefore, to excuse the strange step of her going to Paris, she tells the countess of Stair that strange story about the advice given her by an unknown lady to leave *Reims* directly. As the professed intention of their going to Paris, was to have Lady Jane delivered by the ablest accoucheur there ; and as Lady Stair observed to her, that she ought to have had some of the British people then at Paris witnesses to the delivery, she has an excuse ready at hand, which is, that she was delivered

⑥ ⑥

within

within *half an hour* or within an *hour*,
after their arrival in Paris.

Sir John Stewart in his account of the matter solemnly says, that he went previously to Paris in the month of May or June preceding the birth; and yet, this is clearly proved to be a falsehood. And as this is the case, can we presume any part of the accounts given by Sir John to be true? It is acknowledged by Mrs. Hewit, that there was no nurse bespoke, and she gives this strange and unaccountable reason for it, that Lady Jane did not know if she would be brought to bed of a living child.

Sir John Stewart says, that he would not have known where to have found
out

out La Marre, if he had been wanted suddenly; and that if this had been the case, he must have called another. He afterwards attempts to make this somewhat better, but in reality makes it worse, because he deposes, that when they came back from Paris to Reims, in the year 1748, that he did not even then know how to find out La Marre.

Mrs. Hewit has said that Lady Jane had no sick nurse, and yet Isabel Walker says Mrs. Hewit wrote her they had a sick nurse. Again, it is said that the Pierre Le Marre never came to see Lady Jane but once. This is extraordinary indeed; and the more particularly so, as, according to their own accounts, he had the care of the second boy, who was a weakly tender infant.

The defendant has fixed Madame Law
Bren's, as the place of the delivery.

When Mrs. Napier pushed Sir John
Stewart to give Lady Schaw an account
of the particulars of the birth, he then
fixes the delivery to have happened in
the house of Madame Michelle; and at
this time too, Mrs. Hewit writes her
letter to the Duke of Douglas, fixing
upon the same house of Michelle as being
the place, though she has since sworn,
repeated times, that she could never re-
member *French* names.

Mrs. Hewit has expressly deposed,
that the whole time they were at Mi-
chelle's, Lady Jane never went abroad,
either to Versailles or to any other place;
whereas you have it in proof that she made

two separate journeys while staying at Michelle's; and in particular, Madame Blainville swears expressly, that she went in the very coach with Lady Jane to see the palace and the gardens at Versailles. It must be held to be very extraordinary, that she was able to go to Versailles, and to walk about there, and yet that she never went to see the second boy, who was at nurse hard by her. It has been said, that there is no proof that Lady Jane never went to see this child. But this is a mistake; for Mrs. Hewit expressly deposes that Lady Jane never went to see Sholto at all, "because she was weak" and sickly the whole time they were "at Michelle's."

When they come first to Michelle's, let us observe their conduct here. They

own

talk

talk as if Lady Jane had been lately delivered in the country, and they set out for the country under the pretence of bringing their child from some place towards St. Germaine. And when they return with their child next day, the people at Michelle's are surpris'd with its appearance; and some of the witnesses, particularly Madame Blenville, gives it as their opinion, that the child brought there must have been much older than ten days.

They have told us that this second boy was put to nurse under the care of La Marre: and yet, by their own account, they know not where to find either La Marre, the child, or its nurse. It is extremely odd that nobody ever saw this second child, till he suddenly made his appear-

appearance at Reims. Why not desire the Chevalier Johnston, then at Paris, to enquire after the child who was so sickly and tender?

Sir John declares that he knows nothing of the place where they resided in Paris in 1749, and wherein they were three days before seeing their second child. For this a bad memory is no sufficient excuse. I had not the honour to sit alongst with your lordships when Sir John gave his declaration, but I have heard that he was allowed to retract, but that he did not, upon any part of the accounts given by him. However this be, there is a remarkable instance of Sir John's attention and distinctness in his letter to Mons. Mallifer, at *Reims*.

It

It appears clearly in proof, that both Sir John and Lady Jane were very early acquainted with the suspicions of the birth, yet they took no care to remove these. They said that their honour was called in question : but this was only a pretence ; for why not send to Paris for proofs of the delivery, when it is clear they sent to Aix-La-Chapelle for proofs of the pregnancy ? Or why attempt a proof of the pregnancy at its most fallible stage, when they might have actually produced proofs of the delivery itself ? or at least they might have kept some of the many genuine letters which it is said they received from La Marre. Or, at least, why did Sir John forge letters as coming from La Marre ? Surely, if he could have got real ones, he would have never fabricated false ones.

The

The Madame La Brune, in whose house the delivery is now said to have happened, is not to be found in any of the books either of the *police* or the *registration*; the only Madame La Brune, who it is now said by the defendant may have been the person, is a *garde malade*, and so does not answer the description so pointedly given by Sir John; and indeed it is not credible that Sir John Stewart, whose character was never that of a miser, should, when he had money in his pocket, have allowed Lady Jane Douglas to have been delivered in so wretched a place.

I do not think it however conclusive against the defendant, that La Marre cannot now be found out; it was his strongest argument, that he was not now

The

P p

obliged

obliged to produce him; he should have therefore rested here, for he is not in the least assisted by this proof of a *Lewis Pierre de la Mart*. Sir John's description of his La Marre must make it clear beyond controversy, that this Lewis La Mart cannot be the same man. When we consider the conversations which Dr. Menager had with *Giles* and *Moureau*, we shall be convinced that *Giles's* testimony is more credible than *Menager's*; the manner of this La Mart's signing his name is proved, by his contract of marriage, not at all to coincide with that of his subscription of the four pretended letters.

If La Marre did not deliver Lady Jane, then there is no weight due to the testimony of Madame Garnier; but, besides this,

this, when we consider the difference in the accounts given by Sir John, and those of Madame Garnier, we cannot possibly make them tally together in any one particular. Madame Garnier did not know whose child it was she was nursing; only she says she was informed it was to be a rich child in its own country. This then cannot apply to the second child of Lady Jane Douglas, and if we examine the whole of Madame Garnier's accounts as to the time of the child's coming and going away from her, we shall find, that in point of time, her accounts can noways suit those given by Sir John and Mrs. Hewitt of the second boy.

I have hitherto rested my opinion upon the conduct of the parties concerned; but

I own I cannot lay out of my view the proof of the alibi in the house of Godofroi. Godofroi and his wife do not depose altogether from memory, and their books are further supported by Sir John's own admission, That he and his company did actually come there upon the 4th July. The more these books have been canvassed, the more exact do they appear to me. And when Sir John has himself admitted, that he staid there three days, it is surely most probable, that there would be an account opened for them in these books.

Great cries have been raised against the Tournelle Proces, and indeed the house of lords have in so far condemned it; yet I cannot see it was of such hurt to the defendant as was set forth. The *Parliament of Paris* is a court of honor and dignity.

dignity. What then could induce them to do any thing bad of itself against the defendant? I am not moved with the argument drawn from the plaintiffs' first founding their argument of the alibi upon the books of *Michelle*; for when those books were found to be erroneous, why not resort to *Godofroi's*, which are not so? And as to the *Monitoire*, it does not strike against this part of the evidence at all.

As to the enlevements, altho' the Mignons may have sworn falsely as to some particulars, yet it is clear they spoke truth as to their having a child taken away. The time of this enlevement is critical,—it is surprisngly near.

As to Sanry's child, this does not depend so much upon parole evidence, but
upon

upon the evidence of the church records. This enlevement is brought with most surprising exactness to the very period at which Sir John Stewart, Lady Jane and Mrs. Hewit are in Paris, and when they can give no account of themselves whatever.

There is no proof in the memory of man of any *Enlevement* having been accomplished in Paris.

As to the death-bed declarations, I see Lady Jane behaving with tenderness to the defendant on death-bed, but what she said at that time cannot properly be called a declaration.

As to Sir John Stewart's declaration, it is indeed much more formal; but we often see that people who have committed
great

great crimes will go to death averring
falsehoods.

Upon the whole, I strongly feel for this
defendant, but should feel more to de-
liver what were not the real sentiments
of my heart.

Lord H A L E S spoke next to the
following Purpose.

IN judging of a cause of this nature,
we must act according to strong probabilities and moral evidence. The characters of parties concerned, must, in such an evidence as this, have some weight. And if I could persuade myself of a good character on the part of *Lady Jane Douglas*, I should think it strong on the part of the defendant. But I cannot believe the opinion of some of the witnesses, who have deposed so favourably for her upon this particular, because there is much evidence of her want of truth upon almost every occasion. Thus, when in her letters to one friend, she is professing

sing the strongest attachment to the Protestant religion, and telling them that she was going to a country where she might have the free exercise of that religion; she has in the mean time resolved upon going into the very heart of France, where she knew she could have no opportunity at all of hearing Protestant ministers.

Her conversation with the late Countess of Stair, as it stands deposed to by the honourable Mrs. Primrose, is another flagrant instance of the truth of this observation.

In her letters to Mrs. Carrse, which are dated from Holland, she not only in the most solemn manner denies her marriage with Mr. Stewart, altho' she had been married to him several months, but

Q q

likewise

likewise throws out a deal of scurrility upon her own coufine Mrs. Stewart, for her having repeated the news which she had heard of that marriage. There are several other instances of this deceit in her conduct, in some of her letters to her brother the Duke of Douglas, and in several other parts of her epistolary correspondence. I admit, that nevertheless the private correspondence between her and Sir John, is amongst the strongest parts of the evidence on the side of the defendant; yet there is one thing exceedingly remarkable, that in none of these letters to one another do they ever complain of the suspicions propagated against the birth, nor unburden here what naturally would have been expected to have been uppermost in their minds.

I am

I am at a loss to account for the part that Lady Jane acted throughout the whole of this scene, and must attribute it to the amazing ascendancy which Sir John seems to have got over the mind of this unhappy lady:

Having made these observations, I now proceed to examine the evidence brought in this cause. And 1st, As to the *Pregnancy*. The appearance of this is proved indeed by strong testimony. I observe, that several of the witnesses give as their reason for thinking Lady Jane pregnant, That she was weak and pale; tho' it is very certain that she was so by her natural constitution. Several of the nuns at Aix La Chapelle have deposed strongly to the pregnancy, tho' they are surely not the best evidences to establish a fact of this sort.

Q. q. 2

Mrs.

Mrs. Grieg I esteem a very honest evidence, but one who is over-run with prejudices ; and I have the same opinion of *Miss Primrose*. Much has been said about the miscarriages by Lady Jane ; and more particularly, the defendant has founded strongly on the deposition of the nurse, Manger, and of Madame Rutledge. That mentioned by Madame Manger is now given up, and the defendant supposes, that she may have mistaken the *Catamenia* for a miscarriage.

It is very possible that honest witnesses may have been deceived in their notions of the pregnancy, by entertaining a sort of belief, that some great event or other was to follow,—such as is mentioned in Sir William Stewart's and the Earl of Dumbarton's letters to Lady Jane. Lady
Catharine

Catharine Weemyfs is an unsuspected evidence, and yet she observed nothing of the pregnancy ; on the contrary, her whole deposition tends the other way. The Countess of Wigton does not say, that she herself perceived any thing ; she only believed it because she heard it commonly reported so by others. Mrs. Andreux at Reims had no notion of the pregnancy, neither had General M'Lean, the Miss Hiberts, nor Madame Sautry the mantua-maker. At the same time, if I could give full credit to Isabel Walker, the cause would incline to the side of the defendant ; but I cannot believe her evidence, because she swears to things which I think incredible. A strong instance of this, is, that she does not remember any one thing about the Chevalier Johnstone, tho' he went over in Lady Jane's company in the packet-boat to Holland. Her con-

I

versations

versations with Madame Gillissen in German, and with Madame Andreux in French, I cannot give credit to; and it is truly amazing, that her curiosity should never have led her so much as to look into Sir John Stewart's declaration, nor Mrs. Hewit's oath, altho' she had sent her from Edinburgh the papers in this cause.

But these are not the most material particulars to diminish the credibility due to this witness. In the former oath she swore * expressly, that she had her hands upon Lady Jane's naked belly, and found her with live child; whereas, in her last oath lately emitted in your Lordships presence, she says, that it was not her naked belly that she felt when

* Here his Lordship spoke Latin: it is supposed because there were a great many ladies in the court.

she

she found the child move, but above her shirt, as she thinks. She further swears, that she had never before felt the motion of a child in any other woman.

Is it not wonderful, that this witness had not the same opportunity of making this trial afterwards, when the pregnancy was much more compleat. Had she fix'd upon a more early period, the difficulty would have been charged, but not done away. Another particular in which I think this witness has gone too far, is in what she has deposed as to the letter from Mrs. Hewit at Paris; I am persuaded there never could be any such letter, or at least, it must have been a letter wrote betwixt the 22d and 26th day of July. Another circumstance in which this witness appears to me to have gone too far, is in what she has deposed as to
the

the letter from La Marre, received by Sir John Stewart when in Mr. Murray's, St. James's Place. The account given of it by her is not credible; and I am persuaded the letter she alludes to, is the famous *fourth* letter dated 9th June 1752, whereas they had left Mr. Murray's in September 1751.

Sir John's declaration and La Marre's letters are amongst the capital parts of the proof in this cause. 1st, As to his declaration, there can no pretence of his vivacity apply here to palliate his falsehood. On the contrary, there is the strongest proof of a state of recollection of mind throughout the whole of that declaration. And in fact, Sir John uses with the greatest propriety, sometimes positive assertion, sometimes a *non memini*, and sometimes expressions of doubt. Sir
John

John had pretended to Mrs. Napier, that he was very apt to forget names and dates, though he had a good enough memory as to facts. But the truth is, that, upon considering the declaration itself, it does appear, that he had a very good memory, both as to names and dates, for in that declaration he does give us no less than twenty-five different names and dates. The only time that he seems to be at a loss for names and dates is, when he comes to be examined about the *La Brune's* house, about her lodgers, about the nurse of the child, and the banker from whom he got the money at Paris. Mr. Hepburn of Keith has in his oath deposed pretty strongly as to Sir John Stewart's want of memory, and particularly gives one instance of it, which happened at Boulogne ; but this is by no

R r

means

means sufficient evidence in opposition to so much to the contrary appearing on the face of his own declaration.

As to Sir John's description of La Marre, the accoucheur, it is the most wonderful that was ever heard. He concealed his lodgings even from Sir John, and yet he frequented coffee-houses and the most public walks in Paris. And yet notwithstanding all this, Sir John gets his address, and so sends him letters directed to the care of the post-office in Paris, which he receives and answers.

It has been said by Sir John and Mrs. Hewit, that they were obliged to leave the Madame La Brune's house on account of bugs; but it is also said, that they left the house they were in because it was a

smokey

smokey house. Which was this smokey house ? It was not La Brune's surely, it was on account of bugs they had left this house ; and it could not be Michelle's, for they only here complain of the bugs.

According to Sir John Stewart's accounts, the second child was sent to nurse within two or three leagues of Paris, on the road to Amiens ; and when he was examined afterwards upon oath, he deposes, that the child was a little way from Paris. In short, his whole account of La Marre, and every thing concerning him, is absurd, from beginning to end.

If, as Sir John said, La Marre came from Liege, why not go to that place to enquire for him ? The power of the parliament of Paris did not extend here, and

Sir John was in absolute safety to go. It has been alledged that Sir John was in no mistake when he called La Marre a Walloon, as he was from Montreuil sur Mer; but suppose Sir John had said La Marre was a Roman, it might have been equally well argued he was right.

I have formerly mentioned La Marre's letters: as to these four which are forged, Sir John's alledgeance was, that they were copied from the originals by Mr. Clinton at London. And this again Mr. Clinton denies.

In the fourth of these letters, which I have mentioned before, there is a great deal of art displayed by Sir John. In the first place, it is evidently intended to serve as a certificate from Pierre la Marre, although in the form of a letter. It

would

would have been more dangerous for Sir John to have forged a certificate with all the solemnities, than to forge a single letter. 2dly, It was necessary that the Pierre La Marre should be dead when he was called for to be produced, and therefore Sir John makes him to say in that letter, that he was going again to Naples (on account of the air) as his health was not yet confirmed. And 3dly, Sir John makes the letter to be delivered by a private hand, one Monf. Du Bois, a miniature painter, in order to save the danger from that question, How could you get a foreign letter delivered in England without its having the post-mark upon it? It is remarkable too that in this letter La Marre makes his enquiries after the youngest child by the name of *Sholto Thomas*; though if he had really *ondoyed* him,

him, it is well known, that, upon such occasions, the accoucheur never does give the child a name.

Sir John has said, that he never could find out this *Monf. du Bois* who brought the letter; but Sir John could not but know that if he went to a * certain coffee-house in London, he would have immediately heard of any French artist whatever who had come over to follow his business in England.

These four letters now in process I at first believed genuine, and was thereby convinced that the defendant was the son of Lady Jane: but now that they are proved false, and fabricated, they have

* Here lost the name which his lordship mentioned.

great weight with me to believe that ~~he~~
is not her son.

I will not pretend to go through the
mass of proof before us, and therefore
will only state a few other observations
upon the remaining part of the evidence.
Mrs. Hewit's memory, instead of being
weak like Sir John's, as was alledged, is
really amazing, for she forgets only five
dates in twenty. What are these five?
They are all contained in the compass
of time taken up in the last part of their
journey, and the time between their
leaving Godofroi's and their coming to
Michelle's. But at any rate, at the time
she wrote the letters to the maids at
Reims, her memory must be presumed
to have been clear, and yet here she is
detected in contradicting herself about
the

the story of the nurses, more particularly as to Madame La Favre and Manger. In her letter of the 27th July, she would insinuate to the maids that the eldest child had had only one nurse before they met with La Favre, and yet afterwards she says they had three nurses before Manger, who came immediately after La Favre. Though, as she says, "base jades, they would not come alongst " with us." When Mrs. Hewit came to be examined herself, she gave a different account of the nurses, and her letter of the 12th of August is utterly irreconcilable with the whole of her account given upon oath. Mrs. Hewit has deposed that she had no conversation with Lady Jane about the person who was to deliver her; but is it possible to believe this? were it true, it would be a most singular

singular anecdote in the history of human nature.

I come now to a part of the evidence which I think unexceptionable and conclusive against the defendant; I mean Godofroi's books, from which the following particulars are clear:

1mo, That three people were entered into those books on the 4th of July, at four livres ten sous.

2do, That the account relates to a gentleman who was the head of a family. And

3tio, That this company had no servant amongst with them. In all which particulars the account exactly agrees to Sir John Stewart and his company.

S f

The

The defendant's hypothesis is, that this account may relate to a different company, who were in the house upon the seventh of July. But supposing that this company had escaped two *visa's* of the *inspecteur*, there is scarcely one single instance of an entry in the police books for two or more persons without a correspondent entry in the household-book.

As to the parole testimony of Godofroi and his wife, they had a good cause of remembrance. Sir John Stewart and Lady Jane had been recommended to them by Mr. Mallifer, syndic of Reims; and besides this, it was a very remarkable thing to see British people coming to Paris before the proclamation of peace. And when to this we add the pointed description of Sir John's language and manner,

manner, we have no reason to think they have been in a mistake.

If upon their leaving the Hotel Chaulons, they could have pointed out the La Brune's, or if they could have brought any circumstances whatever to shew that such a woman ever existed, it would have derogated much from the testimony of Godofroi. But no person whatever of the name of La Brune has been found out or heard of, in the least corresponding with the accounts given of that house by Sir John and Mrs. Hewit. By their accounts one would think that the La Brune, in whose house the delivery is pretended to have happened, was like that of Michelle, a respectable house; not that of a *garde malade*, which is the asylum of the loose

and the wretched, a fit enough place for Mignons to go to, but not for Douglas.

The non-existence of the Madame La Bruere is evident; in short, it was necessary in this case, as in all others of imposture, to substitute fictitious persons, and make them act their part in the same. This was particularly done in the famous case of *George Salmanassar*, and was one great means of his detection, as it was likewise in the case of Count Vincentio — Count De La Tory.

As to the two enlevements, whatever objections may lie against the testimony of Madam Mignon, yet the whole circumstance of her child's being carried off is proved by others: and as to Saary's
enleve-

enlèvement, the witnesses here are under no suspicion whatever.

Upon the whole, his lordship gave his opinion for sustaining the reasons of reduction.

This was particularly done in the famous case of George Selwyn, and was one great means of his detection as it was likewise in the case of Count Vincentio—Count De La Tor.

As to the two enlèvements, whatever objections may be against the testimony of Madam Mignon, yet the whole circumstance of her child's being carried off is proved by others, and as to Gary's enlèvement.

Tuesday 14th July.

The Lord JUSTICE CLERK *

spoke first this day, to the following purpose.

IT is now my duty to give my opinion upon this very important cause, the most important, taken in all its circumstances and consequences, that ever came before this court,

The rights of filiation, should no doubt be strictly guarded and secured

* The Lord Justice Clerk is one of the officers of state for Scotland, and presides in the high judiciary court in the absence of the justice general; and as he is always one of the lords of session, he is in this court called by that title.

against :

against challenge, and on the other hand, that same right should be equally guarded against imposture and supposition of children. The plaintiffs in this cause have an essential interest, and have been found to have a good title to pursue.

The situation of the defendant, and the importance of this decision are too affecting not to be felt by every body. Sorry I am, therefore, that I must now give my opinion against him; an opinion which I hope will appear to all, and particularly to those who know my particular regard for the noble personage who patronizes his defence, to flow only from the deepest conviction, and from my regard to the rights of sacred justice.

This

This being so late in the debate, and so much having been so well said by others of your lordships, it would be improper for me now to take up the cause in the same extensive view which otherways I should have done.

I will, therefore, in the first place, proceed to lay down a few of the principles of law and the rules of evidence, upon which, in my opinion, this case falls to be determined. The first point which has occurred in this debate, is, '*Cui incumbet probatio?*' The arguments upon which, I think, have been strained too far by the council upon both sides. The plaintiffs and the defendant have now joined issue upon the fact; therefore if the plaintiffs have not brought

brought evidence sufficient to prove the position which they maintain, then the service must stand; but if upon the whole of the proof we shall be convinced, that the defendant is not the son of Lady Jane Douglas, then the service must fall.

In all actions whether criminal or civil, we have two kinds of evidence to judge of, either *direct* or *circumstantiate*.

In the case before us, the proof is circumstantiate, and therefore each circumstance must be proved by one or more witnesses, or by written evidence: And we must in the next place join the whole of the circumstances together, and then draw our conclusion as to the total amount.

It is admitted by all lawyers, that a circumstantiate evidence may give as full conviction to the minds of judges as any other proof whatever. And it is likewise admitted that no part of such a proof will go so far to convince judges, as the evidence drawn from the oaths, conduct and behaviour of the parties themselves; and this, because the facts being clearly ascertained, the only question remaining is, as to the conclusion from thence to be drawn.

We have heard it said, that your lordship's must have demonstration before the defendant can be turned out of the possession of his *state*: but demonstration implies the physical impossibility of the contrary, which can occur in no case of evidence. The term may indeed be

I

often

often applied figuratively to proofs, but literally taken, it is an abuse of words. We have indeed seen cases where there was a moral impossibility of the prisoner's innocence, and yet, we have seen juries acquit such a one. Such a case was that of Reid, who was lately tried before the criminal court, for the crime of *sheep-stealing*. This Reid, was a poor man of a very suspicious character. He was found with the exact number of sheep in his possession upon the road leading from the very farm from off which they were stole, and he pretended not to bring any proof whatever, that he had attained the property of them in any lawful way. A council at that bar, who likes to distinguish himself upon such occasions, patronized the prisoner's defence, and notwithstanding the clearest and most

positive evidence of all the facts which I have mentioned, "The jury acquitted the prisoner." Upon so strange a verdict your lordships, members of that high court, (I mean all of you who were then present) declared your opinions *separatim*, That this verdict was given in the face of most compleat evidence.

It was said by some of your lordships, That a direct proof by two or more credible witnesses, cannot be redargued by a proof of circumstances not inconsistent with or exclusive of the truth of the allegiance maintained by the persons accused.' I readily admit the justice of this general proposition, and to be sure such of your lordships as admit the credibility of Sir John Stewart, and Mrs. Hewit, and, who think, that the whole

whole of the plaintiff's proof is not inconsistent with *their* alledgeance, must apply the principle to the decision of this case : but such of us as think the plaintiff's proof not compatible with their oaths, cannot give this proposition room here ; it is impossible for us to do so.

It has been admitted, that the mere acknowledgments of parents was not sufficient for the defendant, but it was said that he had the habite and repute of *the country of his birth*. I understand well the weight of the argument from habite and repute, when a child is born of a marriage in the county where his parents, his friends and his connections reside ; or if in a foreign country where it shall appear, that his parents have established such a connection. But what is the habite

bite and repute contended for here?
 What is its strength? Is it the habite
 and repute of their friends and neigh-
 bours at *Paris*? They had none such
 there, for they kept themselves con-
 cealed. What then does it come out to
 be? Not even the habite and repute of
 the family where the birth happened (for
 no such family has been found out) but
 only that of the family of Madame *Mich-
 elle*. But who of that family was
 ever to question the truth of the account
 given by a strange lady of her having
 had a child: And, is it possible, that
 any judge can lay weight upon this as
 being habite and repute?

When, after returning to *Reims* the
 same argument holds good, they came
 there amongst strangers who had no
 interest

interest whatever in the matter; why then should such people either enquire or doubt?

Much has been said of the danger of putting British people, who have transmigrated to the colonies abroad, to prove their birth; but this alarming consideration does not strike in here, because the habit and repute arises to them from their residence in such colonies, and from the knowledge of their relations, their friends and their neighbours founded upon that residence. But will this apply to the present case? where the parties concerned have, by their own deliberate act, shut out the possibility of any habit and repute whatever?

Much

Much has also been said of the great delay of the plaintiffs in bringing this action. If this observation was true, it would strike me in the very contrary light. Suppose that the late Duke of Hamilton had taken up a suspicion of this birth, I will not say whether action at his instance would have been sustained or not; but at any rate it was not reasonable to expect, that when the Duke of Douglas did not challenge the birth, the Duke of Hamilton should. On the other hand, to be sure, the defendant might have brought a declarator of his birth. Yet I do not impute it to him that he did not do so, but I impute it to *Sir John* and *Lady Jane*; that when they were repeatedly warned of the flagrant suspicions, they did not take the common and necessary methods of removing
the

the suspicions, and securing evidence of the birth. If this defendant had been generally received as the son of Lady Jane Douglas, there would have been no room for such an imputation ; but when, from the beginning, the birth was suspected, not only by the Duke of Douglas, but by many others, the delay of bringing an action to have the matter cleared up, must be imputed, not to the plaintiffs, but to *Sir John Stewart and Lady Jane Douglas.*

Much has been said on the part of the defendant, on account of the *Tournelle process*, and the witnesses examined by the *Tournelle*, instead of being "*omni exceptione majores*," were said to be "*omni reputatione minores*;" these were

too strong expressions, and I cannot but disapprove of them. I am sure I never was attached to arbitrary proceedings, but I have too much liberality ever to reflect on the honour of so respectable a court as the parliament of Paris. These witnesses were subject to the jurisdiction of that high court, were examined according to law and rule; how then can such testimonies be compared to those of a slave under his master's rod?

What were the grounds upon which all this prejudice was founded? They were these principally, that the witnesses were examined in private before the Tournelle; and that they were thereby tied down to tell the same story again. I can have no idea, that the strong opinion which I now notice could be found-

ed

ed upon the witnesses complying with the law of their country. How can this infer any suspicion of false swearing? Or why, because a witness is once sworn, shall his after evidence upon oath be thereby discredited. In England, witnesses who have sworn in one court, are sworn again in another. This is the case in all jury-trials in that country, and it is the case in this country too, where we have witnesses examined in the court of session, though they had emitted their testimony formerly in that of the justiciary. This is a thing that was never doubted of before; it has occurred in this very cause, for there are *severals of the witnesses* who after having sworn to establish the defendant's propinquity upon his service,

have been again and again examined upon your lordships commissions.

I I recollect, that there was a period when this Tournelle process had well nigh obstructed the course of justice. Much outcry was raised against it, both here and in another great house; and therefore it is not to be wondered at if there was some strong speeches made upon the occasion: but without prophesying, as my brother has done, I can say this upon the judgment of the house of peers itself, that that court relaxed the severity of your lordships judgment, and that the idea of the defendant, as to this Tournelle process, was there treated with contempt. If these Tournelle witnesses had been picked off the streets of Paris, it would have been a strong thing indeed;

deed ; but they all happened to be unsuspicious, *because* Lady Jane and Sir John have confessedly committed the inspection of their conduct to them. I must therefore, in order to have a complete view of this matter, find out the sources of this alleged corruption, and bribery, and slavish fear. I cannot believe that the noble and honourable guardians of the duke of Hamilton would have either corrupted or concussed the witnesses. To me it is more difficult to believe, that these persons would thus wickedly conspire against the young defendant, than that Lady Jane and Sir John should have conspired together to bring in an impostor. No jealousy can be entertained of Mr. Andrew Stewart, who carried on the whole affair in France. He has already got an honourable testimony

mony from the bench. I back that testimony as to his whole conduct in this cause; and I do believe that the records of court cannot furnish us with a more honourable instance of candour and openness than what he has shown in these proceedings. His character stood the scrutiny and examination of all his private memorials and papers concerning his enquiries in France; a trial, which, it is believed, no agent ever underwent before.

In what I have further to say, I will not however rely much upon the Tournelle witnesses, on account of the clamour which has been carried so extremely high against these proceedings. I would have inclined to have given my opinion upon one general view of the evidence;

evidence; but because all your lordships have given the particular grounds of your opinions, I shall also give mine. The first thing which I take into my consideration is, the characters of Lady Jane and Sir John. I will not however go deep here, as I do own that this is a sort of evidence which seldom weighs far with me, as people who are honest themselves seldom suspect others. Several witnesses have sworn very favourably for Lady Jane upon this point of her character; but I do own, that I see so much real evidence of the falsehood and duplicity of her character, that I cannot lay any stress upon these witnesses opinions.

Her letters to Mrs. Carse, wherein she so much abuses Mrs. Stewart for telling

ing

ing a thing which she herself knew to be truth, and the whole of her conversation with Lady Catherine Wemyss at Aix-La-Chapelle, are extremely strong upon this point. In all her letters to her friends in Scotland she is full of the greatest zeal for the *protestant religion*, and seems to be uneasy till she can get to Geneva, or some other place where she might have the free exercise of it; while in the mean time she goes into the very heart of France, where she could have no opportunity at all of the exercise of her own religion. But above all, this falsehood and duplicity of conduct appears in the forgery of the letters; in which, I think, Lady Jane was concerned alongft with Sir John.

But *cui bono*? and with what motive did they agree to impose children on the world? I am at no loss to see these: the use immediately made of the children to get money from the Duke of Douglas, speaks out the design; and it is most probable likewise, that Lady Jane believed that the dignity and estate of Angus would undoubtedly descend upon her and her issue. As to the motives for this terrible action, I do not believe they had the same views of the crime that your lordships have. They might colour it over with public spirit, a desire to keep up the family of Douglas, and a resentment against the Duke of Hamilton.

Lady Jane was clearly past the period of having children, according to the com-

mon course of nature. This, therefore, shows that it was at least an extraordinary thing. I therefore differ from one of your lordships, who, upon the account of the hability to have children, thought there was nothing at all surprising in Lady Jane's actually having children. And I do aver, that there is not one woman in ten thousand, yea not one in twenty thousand, who produces children at the age Lady Jane was, whatever signs they may have of capability. I only mention this, because it should have led us to be more attentive to the particular circumstances of the alledged pregnancy.

As to the proof of the pregnancy, I think it not satisfactory ; it amounts to the appearance of pregnancy only : there
is

is a *bulk* deposed to by the witnesses, but no evidence of her being actually and truly with child. The uncommon size of Lady Jane's belly and breast, rests on the evidence of Mrs. Hewit and Isabel Walker; neither of whom I believe. And as to what is sworn by the other witnesses, and more particularly by Mrs. Hepburn of Keith, it goes no further than to prove certain external appearances. I therefore leave it here, and acknowledge, that there were the external appearances of pregnancy. Shall I hold these appearances then to be assumed? No. Shall I hold them to be real? No: but I will enquire afterwards if we can have room upon the other proof, and so join the proof which I have already treated of to that other proof which may occur on the side of the

X x 2

defen-

defendant; but if from all circumstances taken together, I can have no conviction at all of the birth, but quite the contrary, then I must hold the pregnancy to have been assumed and false, such as must precede every imposture of children.

Having said so much, I will consider slightly the other circumstances, the principal of which is their own conduct at *Reims*. Sir John and Lady Jane had made a long and unseasonable journey from Aix-La-Chapelle to *Reims*, under the pretence of her being to be there delivered; and yet they loiter away there for the space of a month, without making their purpose known to any person they were acquainted with at *Reims*, or even without so much as once calling for the
advice

advice of any physician or accoucheur. When at last they set off by themselves for Paris, there is no mention made of getting any recommendations to the best assistance at Paris; although that has since been given as the pretence for their going there. Not one letter from any person whatever, but that from Mons. Mallifer. It is an amazing affair, never once to have mentioned to him their *real* design in going to Paris; and that they should have given Mons. Mallifer a false account of that design. I will not enlarge upon the suspicious circumstance of their having left the maid-servants at *Reims*, because this was owned by one of your lordships, who spoke on the other side, to be a strange and an unaccountable circumstance. The fact, however, stands uncontraverted, and the only dispute is

as to the conclusion which it will bear. In all the proofs of *partus suppositio*, this of the actors dropping their common attendants, has commonly occurred as a capital circumstance. Sir John and Mrs. Hewit acknowledge the fact, and they saw the necessity of accounting for it; and they did accordingly give an account of it which is false. Instead of their not having so much money as was sufficient to transport their maids to Paris, (and it would have only required the trifling sum of twelve shillings to do so) it is proved that they had plenty of money to make them live easily, although perhaps not enough to support Sir John Stewart in his dissipated course of life. It was upon this point noticed, that the defendant is not obliged to account for the conduct of his parents.

This

This may be true in all common cases, but not in those of the last importance to the world, in which most, if not all men, agree in their notions of propriety of conduct. As they travelled along in the stage-coach to Paris, there was not the least observation made of her pregnancy, nor did she ever discover the least of that anxiety natural to a delicate lady, making so far a journey at so *critical* a period. There was surely no motive to conceal her pregnancy, if it was true. Yea, upon that supposition it was most natural to expect, that she would have explained to the rest of the company her motives for the journey to Paris, as they might (and no doubt were able to) have given her some advice as to her conduct there. Nature dictated this, and anxiety and honour

honour likewise. These circumstances are indeed amazing, and show to me clearly, that the necessity of the appearances of pregnancy, *formerly* assumed, being now over, Lady Jane designedly kept every thing as close as she could.

Upon the evening of the 4th July, they arrive at the house of Monf. Godofroi in Paris; a respectable house, and of all other lodgings the most adapted to the purpose of Lady Jane Douglas's delivery, as they had come there specially recommended by Monf. Mallifer at Reims. Or if Lady Jane had thought proper to quit that house before her delivery, it was natural to have expected, that she would have acquainted Mr. or Madame Godofroi of this resolution, and desired their advice as to the proper place

place she might go to for that purpose. And it surely would have been natural too, to have spoke something to Mr. Godofroi about the Pierre La Marre, who was an absolute stranger to Lady Jane, and who it is now said had been spoke to before-hand to accomplish the delivery. But instead of all this, there is no talk at Monf. Godofroi's, either of a pregnancy or of a future delivery. There is not even the appearance of pregnancy here, about which we have heard so much when at Reims.

As to the Madame *La Brune's*, to which it is pretended they went, and where it is said she was delivered, upon the tenth of the month, was it not to have been expected that Sir John Stewart should have been able to give some satis-

Y y

factory

factory account of this matter? But indeed if ever there was such a house, it is inconceivable that it has not ever been discovered. A train of circumstances led to such a discovery; the appearance of strangers, and more particularly British people of rank, must have attracted the attention of almost the whole little street in which the Madame La Brune is said to have lived.

When to this we add Sir John's note to Lady Schaw, and Mrs. Hewit's letter to the Duke of Douglas, in both of which not the house of *La Brune*, but that of *Michelles*, is fixed down for the place of delivery, it is clear that all this story about the *La Brune* is a perfect fiction. But what I think the strongest part of the proof of the falshood of the delivery

is,

is, the many letters wrote by Sir John and Mrs. Hewit, bearing date the 10th and the 11th of July, in which there is not the least mention made of any thing like a delivery. Suppose the defendant's hypothesis just, that these letters, bearing date of the 10th, were actually wrote upon the 9th, What then? the letter of the *eleventh* still remains, and strikes strongly by itself. Will an after-correction remove the difficulty? No, it makes it worse; because, if it was a real birth, what reason could there be of making any correction as to the day and hour in the letter of the *twenty-second* of July? When to this we add, that all and each of their letters, wrote from Paris to their friends in Germany and Britain, were falsely dated from Reims, is it possible

to conceive that this circumstance should not have great weight in the cause? And indeed a long train of letters written by them from Reims to Britain show clearly, that this of the false dates was done of design. Their not saying that the birth had happened at Reims makes the thing so much the worse; for the whole strain of these letters is to make their friends, especially those in Britain, believe, that the delivery had actually happened at Reims. This appears from Sir John Stewart's letter to the Earl of Crawford, written at Paris upon the 10th of July; and from another letter of the 26th of the same month, both which are falsely dated from *Reims*. And when to this we add Lady Jane's letter to her brother the duke, not only falsely dated from Reims, after the pretended delivery,

but wherein she says, that "she had
 "come to remain *there* on account of
 "the cheapness of the place and the fa-
 "lubrity of the air;" can we think that
 all these circumstances are of no import-
 ance in a proof of a most complicated
 fraud and imposture?

There is still one other capital circum-
 stance which affects me strongly in this
 cause, and for which there has been
 given no shadow of excuse; and that is,
 though the delivery is said to have hap-
 pened upon the 10th of July, yet no no-
 tice is given of it by letters till the 22d
 of that month. Try if you can find any
 excuse for so strange a proceeding! Can
 you take the hurry they were in as the
 least excuse for this neglect? No: they
 would have been naturally and power-
 fully

fully prompted immediately to communicate to all their friends so joyful an event as the birth of twins.

As to the *alibi*, in Godofrois, I am clearly of opinion, that the evidence thereof is conclusive against the defendant, notwithstanding all that I have heard thrown out against that evidence. It is clear that they all were there from the fourth of July to the *thirteenth* or *fourteenth*. There is no competition as to the place of their residence during this period, which indeed would have made a great odds upon this argument.

As to the evidence of Madame *Michelle* and others of her family, they are abundantly partial to the defendant; and yet this whole evidence gives such a picture

picture of the situation of Lady Jane upon her coming to that house, as is utterly incredible upon the supposition of a recent delivery.

Instead of Lady Jane's being so weak and ill as not to be able to go even once abroad from *Michelle's*, (which Mrs. Hewit has expressly deposed) you have it established by the most credible testimonies, that she took two separate jaunts during that time, and that one of these was to see *Versailles*. What a picture does this give of the perjury committed by Mrs. Hewit and Sir John Stewart, and how well does it account for Lady Jane's never going once to see her poor, sickly, second child! For is it credible, that, while she was thus taking jaunts of pleasure

pleasure round Paris, she should not have found time to have seen her own child?

As to the *enlevements* : I desiderated if there had been any such thing as this proved to have been accomplished in the memory of man, and I find there is no proof of any such ; and though I am by no means clear, that these *enlevements* are directly brought home to Sir John Stewart ; yet, when we take the whole of these circumstances alongst with the other evidence which I have formerly stated, it conveys a belief to me, that these children were disposed of to Sir John and Lady Jane.

As to the new man-midwife, *Louis, Pierre de la Mart* : I must acknowledge, That when I considered this part of the
evi-

evidence, I did not think that the defendant had been drove to the desperate necessity of rearing up a different man-midwife. It is not possible to consolidate these two persons together: they are different persons clearly and totally, in *age*, in *name*, and *country*. The account which the defendant now gives of this matter is destroyed by the inherent circumstances of Madame Garnier's oath, who I do believe to have been no more the nurse to the second child, than this Pierre la Mart was the accoucheur.

I now come to speak a little of the conduct of the pretended parents themselves, after the supposed delivery.

It appears that they were very early informed of the suspicions of the birth,

Z z

and

and yet that they never took any prudent step to remove them. All that they did was to procure from Madam Tewis a declaration of the appearance of pregnancy at its most fallible state.

As to the opinion said to have been given to Lady Jane by Lord *Preston-grange*, that she was not obliged to bring any proof of the birth, I do not believe the testimony of Isabel Walker upon this point; and this *because* Sir John and Lady Jane's *joint* letter to Madam Tewis shews to me, that they wanted to have had a proof of the whole, if they had dared to go to Paris to seek it.

As to the forgery of the letters, I think this part of the evidence should by no means be treated like a *lusus ingenii* in
this

this high court. What a strange view of this cause is it, to suppose that these parties, when conscious of a true birth, would have both (for Sir John and Lady Jane are clearly confederates) joined to support that birth by forged and fabricated evidence; first thereby to impose upon the duke of Douglas, and thereafter upon all the world, by handing down this false evidence to latest generations? See what deep wounds such a thing may have given to the law! and it is no excuse for this, that Sir John may pretend he was only conveying to the judges by means of forgery what he knew to be true. For the whole evidence shows that there never were any original letters from which these could have been taken.

It was said, that though the defendant founds upon the acknowledgment of his

parents, yet that, as he does not rest the whole of his plea upon this, the accounts given by his parents cannot hurt him. But is it possible to maintain that there is any weight due to the evidence of a parent who has been guilty of such repeated falsehoods, and who has in this very cause forged and used false evidence for the perverting of justice ?

Lord MONBODDO spoke
last upon this Cause to the
following purpose.

I AM not vain enough to think that any
thing I can say in this debate can have
the effect to alter the opinions given by
any of your Lordships; but yet, as I have
a full conviction, that the defendant is
really the son of Lady Jane Douglas, I
think it incumbent on me upon this occa-
sion to give the reasons of this my opinion
at some length.

The plaintiffs have now taken up a very
different ground from what they at first
maintained. At first the whole of their
proof was said to be founded, first, upon

the books of Michelle; secondly, upon the age of the child brought to her house; thirdly, upon there being no accoucheur in Paris in the year 1748, of the name of *La Marre*; and, fourthly, upon the suspicions in France at the time. These were the capital circumstances laid down in the plaintiffs original condescence. But now we have got a new cause, and there is no vestige remaining of the old one. This new cause is founded, first, on the conduct of the parties themselves; secondly, on the alledged *alibi* in the house of Godofroi; and, thirdly, upon the enlevements. Upon this I would observe, that the changing of ground gives at no time a very favourable opinion of a cause, and that particularly in the present case, it shews that the plaintiffs themselves had no confidence in Mr. Godofroi's evidence,

when

when they at first placed the alibi in the house of *Michelle*. Yet after all, there is no such clear, plain, and convincing evidence brought as should take away a man's birth-right from him.

There are several very material points of law which I will beg leave to notice, before I proceed to state the evidence. And, first, as to the *onus probandi*. This the plaintiffs in their memorial lay wholly upon the *defendant*. This is indeed a most dangerous doctrine ; and if this was law, no man whatever can say that he has a *state* at all. The acknowledgement of the parents, and the habite and repute, is the charter of every man's birth-right. Positive evidence is confined to a very few facts, and in proportion as by length of time such positive proof may be diminished,
the

the legal presumption for filiation does encrease. But yet in the present case, this defendant rests not upon that legal presumption, but has brought both direct and circumstantiate evidence of his birth: which being the case, he cannot be turned out of possession but by demonstrative evidence. I am here aware of the observation made by one of your Lordships, That literally taken, there can be such thing as a demonstrative proof; but what I call demonstration must exclude the possibility of the thing's being otherwise. Yet I do not deny, that a circumstantiate proof may be here admitted, but it must be such a one as is sufficient to exclude the possibility of the real birth. Another point of law, is as to the habite and repute. It was said, That there was no habite and repute to a person borne in a foreign country.

try. This appears to me to be a very dangerous mistake. I cannot confine the habite and repute to the voice of the family, friends and relations at home, since it may arise from the voice of friends, neighbours and acquaintances abroad. And in the case before us, it is clear there were no suspicions heard of in France. Even the plaintiffs own witnesses, Madame Blenville and Madame Michelle, are strong evidences for the defendant, as to his habite and repute there,

The next point of law which falls to be treated of is, That of the *acknowledgement of the parents*. It has been said, That this must go for nothing, because Sir John Stewart has prevaricated, or told falsehoods upon oath. But this is confounding the testimony of Sir John with

A a a

the

the act of his acknowledgement. It would be hard indeed if a man brought to be examined in court in the situation Sir John then was, should by mistakes, or even by telling falsehoods, deprive his real son of his birth-right. Sir John's declaration was obtained by surprize from your Lordships, and he was under a fit of sickness when he was brought to be examined before you. But even supposing your Lordships should give all the weight to this plea of the plaintiffs which they desire, what does it amount to? Only to a few mistakes in his description of the Pier La Marre. The mistake about his being a Walloon is trivial; it is just as if we should call a man on the *other* side of the water of Tay a *Perth-man*. But surely the use made of this and of other such mistakes cannot destroy

Doctor

Doctor *Menager's* testimony, nor that of *Madame Garnier*.

But even suppose that Sir John had been willingly perjured, --- what then? Would his perjury have a stronger effect against the defendant than that of any other witness? And yet it is certain, that though a third person, who was a witness, had perjured himself upon the side of the defendant, it would have had no effect at all upon his general plea.

The next question in point of law, is, What are to be the effects of the *delay* on the part of the *plaintiffs*, in bringing *this* action? Surely both the Duke of Hamilton and Sir Hugh Dalrymple might have brought their action immediately upon the birth of this defendant. And as they

did not do so then, the effect of this delay will at least be to receive good evidences for the defendants, such as that of *Madame Tewis* and *Effy Carw*, who are now dead themselves, but whose evidences stand reported upon oath by *others*. This is a cruel case indeed! When the defendant was a poor man the plaintiffs never attempted to controvert his birth, they have only attempted this when he succeeded to the estate of Douglas. The plaintiffs complain, that by the lateness of this action they have lost proof, but whom then *sibi imputet*, and upon this account it is not now incumbent upon the defendant to bring any proof at all in this cause.

The plaintiffs have tried to disqualify *some* of the witnesses, as being *accomplices* in

in this alledged imposture; but this they cannot be allowed to do: and indeed if this was law, who could stand against it? The plaintiffs might as easily have extended the same charge of accomplices against the La Brune and la Marre, in order to have prevented them from being held *credible* witnesses, if they had been now *alive*, and found out, as throw out the charge against Mrs. Hewit and Isabel Walker. What reason can there be for disqualifying Mrs. Hewit and Isabel Walker from being credible witnesses, on account of this charge thrown out against them? None of them shewed the smallest appearance of guilt upon any of their examinations. As to Isabel Walker, she was a perfect model for a witness. It has been alledged that this witness is not *credible*, because in her last examination in
 presence,

presence, she has deposed, "That she never read either Sir John Stewart's declaration or Mrs. Hewit's oath," although she had the whole of the proofs in her custody. But it is to be remarked, that people who have something to do, will seldom dip into such large volumes as those now under our consideration.

Mrs. Hewit has indeed fallen into many mistakes in her evidence, but these, instead of proving the imposture, prove against it; for upon the supposition of an imposture she would have been much better prepared to have told her tale. In one of her letters to Isabel Walker, Mrs. Hewit recites the whole *circumstances* of the affair. What could be the *use* or *intention* of this letter, upon the supposition of their both
being

being accomplices together? Upon such a supposition this conduct betwixt the two is absolutely incredible. Much has been said of the presumption of fraud arising from Mrs. Hewit's correcting the dates of some of her letters to Isabel Walker, but it may be asked, what could be the use of this to Isabel Walker, her own accomplice? Indeed the stile and manner of the whole of Mrs. Hewit's letters is so unaffected and natural, that it goes very far to persuade one of the truth of the birth. But whatever mistakes Mrs. Hewit may have fallen into, is it not absolutely certain, that after so long a time most witnesses would have done the same? If the La Brune had been found out and had been examined as a witness, and had fallen into mistakes, then the plaintiffs would have pleaded that she was *perjured* likewise.

But

But in fact the witnesses concur in every material circumstance, which is enough; and therefore though they may have disagreed in the *minutiae* of their evidence, they are not upon that account the less credible. It has been said, that Mrs. Hewit is perjured, because she swears, That Lady Jane never went from Madame Michelle's house upon a jaunt to Versailles. But I must observe, that we have only, in opposition to Mrs. Hewit, on this point, the single testimony of Madame Blenville, who it is not at all improbable has been here in a mistake herself.

I come now to consider the defendant's evidence, which is partly direct, and partly circumstantiate.

To distinguish evidence from suspicions, is our chief business in the present cause,
And

And here indeed is the great difference betwixt a learned judge and a common man. The latter hastily takes up his suspicions, and from them as hastily draws his conclusions. And if judges shall leave the open road of evidence, and hunt after suspicions, who can stand before them? Many arguments have been drawn from the conduct of the defendant's parents, but there is a great danger least we should be mistaken in forming such arguments. The defendant cannot account for the whole of the conduct of his parents; although some of the most suspicious parts of their alledged conduct has been happily accounted for; such as that of the strong fact (seemingly fraudulent) of their having dropt their French man-servant at Liege. There is another instance, where-
in the plaintiffs themselves must confess

they were mistaken, in judging of the conduct of Sir John. It was by the plaintiffs averred, that Sir John, who was then commonly called Colonel Stewart, had been several days in Paris, under a feigned name, whereas it now comes out, that the person they thought was Sir John, was really Colonel Stewart of Ardschiel. It has been said, why did they not enquire after the Pier La Marre : but here it is to be observed that they did not get the return of their letter, containing Madame Tewis's declaration as to the pregnancy, until after the death of Lady Jane. And for their having not gone sooner in quest of La Marre, many substantial reasons may be given. Sir John was, for two or three years, in prison in England ; and Lady Jane remained under the greatest poverty, and oppressed with affronts and afflictions

of every kind. But it has been said, why did they forge letters to supply the want of real ones?

These letters can with no propriety be said to be forged evidence, because they were never used. Mrs. Menzie's (upon whose testimony the plaintiffs affirm, that Lady Jane knew of the forgery, and that it was these very letters which she was to carry and to shew to her brother) is a very suspicious evidence; and although she was above all exception, it does not appear from what Lady Jane said to her, that it was any of the four letters then said to be forged, which she had at that time in her pockets.

It is clear, that Sir John had received several letters from La Marre. If it was a

forgery, then it is a very bungled one indeed. It is clear, that these letters said to have been forged were so many copies from originals. This appears by a variety of particulars, and especially from the misplacing of several words, which shews that the person who wrote them had copied them from others *line for line*.

I come now to make a few general observations upon the cause. Upon the supposition of an imposture, the day fixed for the birth was by much too early. Again, the leaving of the maids at Reims

is to me a proof that there was no fraud at all in the matter. These maids were both, according to the plaintiffs plea, accomplices, why not then carry them alongst with them to Paris? Why two witnesses more, swearing positively to the

actual

actual delivery, would have put it beyond doubt. This was not acting the part compleatly. In the same light I view all the imprudencies on the part of *Sir John*. Upon the supposition of an imposture, he would have been exact and pointed as to the very *hour* where the birth was, and his not having been so exact and uniform, can be accounted for upon no other supposition but that of innocence. Again, had there really been no imposture in the case, it was necessary for the accomplishment of it to have wrote ther friends immediately after the birth.

Much weight has been laid upon *Sir John Stewart's* note to *Mr. Napier*, where, as the tendency of this is to shew there was no imposture at all. If you hold it to have been an imposture, you must necessarily

cessarily suppose a plan; and if there was a plan, it was one essential part of it to fix upon a certain *house* as being the scene of the pretended delivery. That place and house therefore Sir John never can be supposed to have *forgot*; or if he could be supposed to have actually *forgot* it, the immediate danger of a *detection* would have readily prevented him from ever fixing the scene of delivery to have been in a *public-house* like that of *Michelle's*.

But it has been said Sir John Stewart afterwards corrected this note, when he found out that there had been enquiries made after *Michelle's* house, and the time of this correction is said to have been *after* Mrs. Napier received the answer from Lady Francis Stewart, and which was after her inlaying upon the fifth of August

1756.

1756. But in fact Lady Francis Stewart's letter is only dated at Aix La Chapelle the 28th of August, and so could not reach Edinburgh by course of post till the middle of September, before which time Sir John Stewart had corrected the mistake as to the house of Michelle's being the place of delivery.

Much has been said about the non-existence of the Madame La Brune, whereas I confess it is most clearly proved to me by the oath of Doctor Menager, that there was one of this name, who was very intimate with the Pier La Marre. She however has not been found out: in the course of nature she may be dead as well as her daughter by her loose way of living. There has however been discovered a Madam La Brune living in the Rue

Dominic,

Dominic, Fauxbourg St. Germaine : this woman was a Garde Malade, and may have been the person. What then is the amount of the evidence upon this head ? It is only this, That no body has been found to whom the Madame La Brune even told any thing of the matter. Much has been said on the general conduct of the parties. But it was surely very proper for Lady Jane to go abroad, and it was very proper for her to go to Aix La Chapelle, because it appears she was in bad health. It was also very proper for her to quit Reims on account of the unskilfulness of the accoucheurs there, which is indeed proved by Madame Mallifer's evidence upon this point.

Much has been said about their desiring their letters to be directed for them at
Reims,

Reims, when they were truly at Paris, but then it is to be considered, that Reims was the place of their *residence*, and that they had a house taken there, in which they had left their maids. Much has been said about probability and improbability in this cause; but sure I am, that the plaintiffs account of the imposture is of all other things the most improbable. It was surely highly improbable, that Lady Jane, who (it is proved) had the capability of having children, should bring in two beggars brats who might cut out her own eventual issue: it was surely highly improbable too, that they should suppose two at one time, and thereby lay themselves to so great a danger of detection. But it has truly happened, that the proof found out as to the nurse of the youngest child, has supported the birth of the eldest.

C c c

But

But to proceed upon the plaintiffs account of the matter; they, when they had only one child procured, gave out that they had two, and of the one they had not got, they give infallible marks sixteen months before they brought him to Reims, and when he arrives there he is the very picture of Lady Jane.

Is this all possible then, upon the supposition of an imposture? But still farther, What was the method they took to accomplish this supposition? They take a special recommendation to the house of Godofroi, and yet they have the day of delivery to be one of those days they were actually residing with him. This is indeed incredible, and therefore it would appear, that Mons. d'Anjou, the plaintiffs procureur, in his memorial, says, that they

went

went to a private house, and that they did not leave that house so very soon as within eight days after the pretended delivery.

Much has been said about Lady Jane's having *concealed* her pregnancy, from some persons, by wearing a particular dress, but this was unnatural and meanless upon the supposition of a fraud; but upon the supposition of her being really with child, it may be accounted for by one of these two ways, either from her bashfulness, or from her desire to conceal the marriage. The plaintiffs have said, That Sir John and Lady Jane concealed their going to Paris; whereas on the contrary, they told it to every body; to Mr. M'Lean and Mackenzie; and still more, they went thither in the public *Voiture*. Isabel Walker and

Effy Caw, the two maids, have been said to be accomplices in the fraud; but it is proved that Lady Jane treated them very ill afterwards; and that she actually turned off Effy Caw from her service. Upon the supposition of an imposture, Sir John and Lady Jane must have been expert hypocrites indeed, and of this there is a remarkable example in the story of the beggar at Liege, at it stands related by Mrs. Hepburn of Keith in her oath.

Sir John Stewart upon no one occasion ever changed his name; he did not run for it after he had stole the children in Paris, but instead of doing so, goes back to Reims, where they reside sixteen months, and then return again to Paris without fear or dread.

I now

I now come to speak of a material article in this cause, and that is Godofroi's books. In what I am going to say, I will distinguish his parole evidence from that of his books, and hope to convince your lordships, that he is not worthy of credit. In the first place then, I say it appears, that Mr. Godofroi was instructed to give evidence. It was other-ways impossible for him to apply the blank article in his book to Sir John Stewart without knowing these two things, First, that Sir John Stewart was the gentleman that arrived at his house upon the fourth of July, and 2dly, He must have been told, that Sir John Stewart had actually a *third* person with him. This man Godofroi actually forgets his own hand writing, and he says, that it was that of his wife. Upon his first

ex-

examination, he actually forgets that he had two books, though it afterwards comes out, that he kept two. But then when he goes to his *livre logeur*, he finds no *third* person there; therefore it is clear, that he must have been informed by some other person or other, that Sir John Stewart had *two other persons* alongst with himself. 2dly, I say that Mr. Godofroi has varied in his tale; and for the proof of this, I appeal to the *exposé de faits*, kept by Monf. D'Anjou. 3dly. I say that Mr. Godofroi has sworn falsely, in so far as he swears that his books contained the names of all the persons who came to his house. Michelle's books were at first strongly founded on by the plaintiffs; and to make these books appear accurate and exact, Monf. Durisseau seems to have perjured himself.

I do suspect many bad practices with these witnesses in Paris, by whom these practices were carried on; I am not concerned to enquire, but I have so bad an opinion of the plaintiffs proof, that although they had proved twice as much, I would have paid no sort of regard to it.

As to Mr. Godofroi's books themselves, they are far from being accurate or exact as he deposed they were, for the defendant has clearly proved, that there are many names entered in his *livre Du Dupense*, which are not to be found in his *livre Logeur*, and that there are six at least, in his *livre Logeur*, that are not inserted in his *livre Du Dupense*; particularly one Mons. De Saraffin is entered into the book of expence, eighteen days before

before he is entered into the livre *Lo-
geur*.

As to the enlevements, I remember, that the oldest council for the plaintiffs, in his pleadings only urged them as circumstances. As to Mignon's child, some of the witnesses say, that it was three months old at the time of its being taken away. And as to Sanry's child, neither the description of the persons, nor the time answers to Sir John Stewart.

I will now run over the capital circumstances of the defendant's proof of the pregnancy as well as the actual delivery. None of your lordships have denied, that there were the appearances of pregnancy; and that they were natural I think is clearly proved. Mrs. Hepburn

burn of Keith must be perjured with the rest, if the pregnancy was not real. In the condition Lady Jane was when Mrs. Hepburn came into her room, she must have observed every thing about her.

This proof of the pregnancy is confirmed by a proof of her capacity to have children, and of *miscarriages* afterwards. And because there are a few contradictions attending these miscarriages, will we therefore say there were none? Upon this point of fact, the witnesses cannot be mistaken, although perjured they may be. When to all this, we add the appearance of her *reconvalescence* upon their going to Michelle's; and when we compare the depositions of Madame Michelle and Madame Blenville with those of the witnesses who saw Lady Jane

at Aix, Leige and other places, it is clear, that somewhat must have happened, and what it could be but a real delivery cannot easily be imagined.

As to the evidence of Dr. *Menager*, the story told to him by *Pierre La Marre*, of his having delivered a foreign lady of twins, exactly corresponds to the delivery of *Lady Jane Douglas*. *Menager's* testimony stands uncontradicted by any one witness. Some of your Lordships hinted, that *Menager* was not to be believed, because he said, that *La Marre* gave lectures upon midwifery; but his own brother *Francois La Marre* says the same thing. If *Menager* is perjured, he must have been corrupted. Then, who was it that corrupted him, who of the British agents was likely to corrupt him?

him? In what he has said, he was supported by Giles, as the conversation betwixt Giles and him, stands confirmed by Monf. Moreau; although Mr. Giles was afterwards pleased to deny upon oath what he had formerly said.

Madame Garnier the nurse, by the whole of the accounts she gives, establishes beyond doubt, that the conversation which La Marre had with Doctor Menager about the youngest of the twins which he had under his care, does really relate to the youngest child of Lady Jane Douglas. In short, this is the most conclusive circumstantiate evidence that ever was.

It is of the essence of a circumstantiate evidence, that the different witnesses

D d d 2

should

should swear to different facts, which though independant of each other, all tend to the same point. Such a chain of evidence as the one now before us could not have been formed by chance. And if Dr. Menager and Madame Garnier had been corrupted, each of them would have said much more.

This not only shows the high probability of the defendant's alledgeance, but also the high improbability of the plaintiffs story. Sir John names La Marre as being the accoucheur from the very beginning: The Plaintiffs denied the existence of such a one; but now he is found to have actually been a practicing *accoucheur* in Paris in the 1748, and to have had conversations with his brethren of the profession about his having

ing

ing delivered a foreign lady, of an advanced age, of twins.

Sir John and Lady Jane further told, that they had left their youngest son under his charge somewhere in the neighbourhood of Paris. Lady Jane named Menielmontaine as the place the child was left at. Madame Rutledge says, that Lady Jane named the place, though she has forgot the name.

Are all these things then possible upon the supposition of an imposture? I wish that the plaintiffs had here given us a calculation of chances upon all these wonderful circumstances. For if all these particulars be true, as I have no doubt they are, then Sir John's contradictions and falsehoods are of no importance.

Upon

Upon the whole, his Lordship declared, that he had not even a suspicion remaining in his mind of the truth of the defendant's birth.

The whole fifteen Judges having thus given their opinions, and the court being equally divided upon this important question, the Lord President proceeded to state the vote, *Sustain* or *repell* the reasons of reduction? And it carried by his lordship's casting voice, SUSTAIN. And then the judgment of the court was wrote out in the following words. " The Lords
 " having considered the state of the
 " process, the writs produced, and
 " testimonies of the witnesses adduced,
 " and heard parties procurators thereon ;
 " and having advised the same with the
 " memorials,

“ memorials, observations, and other
“ papers given in by each party, they
“ *sustain* the reasons of reduction, and
“ reduce, decern and declare accord-
“ ingly.”

For the Plaintiffs.	For the Defendant.
The Lord PRESIDENT.	Lord STRICHEN.
Lord BARJARG.	Lord KAIMS.
Lord ALEMORE.	Lord AUCHINLECK.
Lord ELLIOCK.	Lord COALSTON.
Lord STONFIELD.	Lord PITFOUR.
Lord KENNET.	Lord GARDENSTON.
Lord HALES.	Lord MONBODDO.
Lord JUSTICE CLERK.	

F I N I S,

(301)



and other
they
tion, and
the record-

memor
"paper
"Volum
"reduc
"ingly"

For the Defendant

Lord Stirling

Lord Kilmarnock

Lord Auchincloss

Lord Clarendon

Lord Johnston

Lord Galloway

Lord Minto

For the Plaintiff

Lord Stirling

Lord Kilmarnock

Lord Auchincloss

Lord Clarendon

Lord Johnston

Lord Galloway

Lord Minto

Lord Stirling

